FOREIGN MOTOR CARRIER OPERATIONS

(98-31)

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

OCTOBER 7, 1983, AT SAN YSIDRO, CALIF.

Printed for the use of the
Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
30-787 O WASHINGTON : 1984

H641-4

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FOREIGN MOTOR CARRIER OPERATIONS

FRIDAY, OCTOBER 7, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
San Ysidro, Calif.

The subcommittee met, pursuant to call, at 10 a.m., in the San Ysidro Senior Citizen Center, 125 E. Park, Hon. Glenn M. Anderson presiding.

Present: Representatives Anderson, Howard, Hunter, and Sunia.

Mr. ANDERSON. The meeting of the Subcommittee on Surface Transportation will come to order.

Two years ago, this subcommittee met in Denver, Colo., for the purpose of receiving testimony on the impact of the Motor Carrier Act of 1980. It was at that hearing that a trucker from this area, who we will hear from a little later—Frank LaSalle—testified on the problems associated with foreign motor carrier operations in the United States. Perhaps I shouldn't admit this, but what he had to say was essentially new to most all of us at that time.

So, upon our return to Washington, we investigated the matter. We discovered that, indeed, foreign motor carriers were operating in our country both legally and illegally at a time when our domestic trucking industry was reeling from the effects of the recession and new competition which was induced by the regulatory reform of the industry. We also discovered that U.S. motor carriers were effectively prohibited from operating in the nations of origin of these foreign carriers.

When taken together, these two facts resulted in a situation where foreign carriers were taking business away from U.S. operators on freight being hauled strictly within our country; and that on the international shipments of goods, a shipper would almost certainly hire the foreign carrier to avoid extra costs incurred in the hiring of a U.S. operator. These additional costs would result from the fact that a U.S. trucker, upon crossing the border, would have to transfer the freight to a foreign carrier at the border to complete the journey into his country.

This situation was unacceptable, and to address it, I added language in the Bus Regulatory Reform Act of 1982; language which was weakened upon the insistence of the Office of the Special Trade Representative, imposing a 2-year moratorium on the issuance of any motor carrier certificates to carriers from nations contiguous to the United States.

This language has not been as effective as I would have liked, as much of the truck traffic entering this country is exempt from eco-

nomic regulation and so does not require the certification which we prohibited. Upon further examination, we learned of various means by which a foreign carrier might easily operate illegally in this country.

Last winter, we attempted to address the issue again by at least assuring that foreign trucks operating in this Nation were financially responsible, requiring that most for-hire trucks entering the country carry proof of insurance.

It seems to me that much remains to be done. By coming here today to San Ysidro, the major truck crossing point on the Mexican border, we intend to hear firsthand, and this afternoon to see firsthand, what all the problems are and to try to determine a solution.

I want to send out a signal that I intend to do something. In a letter to me dated August 16, 1982, the U.S. Special Trade Representative told me he was determined to intensify our efforts to negotiate a solution to the problem. He cited a Transportation Working Group of the United States-Mexico Joint Commission on Commerce and Trade and the strides they might take in hammering out an agreement. Unfortunately, no meetings have taken place on this subject since that letter was signed some 14 months ago.

I want to send out a signal. I want it to go in two directions: to Washington, D.C., and to our friends to the south. I want them to know there is someone in Congress in a position of authority who is going to act on this problem if they do not, and they may not like what we come up with.

You know, my goal is not to shut off truck traffic between our two nations. My basic philosophy is one of free trade. But free trade must be a two-way street. My goal is to get the Government of the United States to stand up for what is just and reasonable and to say to our neighbor, "I will give you access if you give me access." Who can argue that this is not fair?

Now, with me today I'm very pleased to have—and I will have them say something in just a moment—the Congressman from this area, Duncan Hunter. We have the Delegate from American Samoa, Fofo Sunia; and we also have members of our staff. We have Ed Babbitt our minority counsel. Paul Schlesinger is the staff member that works closely with me. He is my right arm. Also, Dick Sullivan who is the chief counsel for the full Public Works and Transportation Committee. Jack Fryer is the regulatory counsel; and Dottie Beam, our executive staff assistant.

At this time, I would like to welcome your Congressman and our good friend, Duncan Hunter.

TESTIMONY OF HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUNTER. Mr. Chairman and Congressman Sunia and members of the subcommittee, I appreciate greatly and I know that the truckers in southern California and particularly in this area appreciate your attention to this very important problem that is, in fact, squeezing the life out of a great deal of our industry. We welcome you here, and we want you to know that you have our heartfelt thanks for addressing the problem.

I know, Mr. Chairman, you addressed this problem in your legislation that included a moratorium on ICC operating permits to Mexican truckers, and I know that you realize and have stated that that remedy has been circumvented to some degree by certain problems that exist, certain laws that exist along the border in certain commercial zones.

You know that we presently have established commercial zones all the way along the United States-Mexican border, and these zones were originally created to provide for ease of commerce within what we call "natural zones of business," and every city in the United States has a zone surrounding it that is designed to ease the flow of everyday commerce within individual municipalities by exempting such commerce from ITT regulation, including that regulation that requires the operating permit and that is affected by the moratorium that you have enacted into legislation.

Presently, the San Diego zone extends some 20 miles from the corporate boundary, and it includes, in entirety, all of the municipalities which lie partly within the 20-mile circle, and I think that that is a good deal of our problem here in that we have a number of truckers who come across from Mexico who have no operating permits, and yet they can come across, without these operating permits, ostensibly to do business only in the immediate area—in this immediate commercial zone—and yet once they have made the entry and have gotten access to the U.S. highways, they then proceed to go to Long Beach or to Portland, Oreg., or to Chicago or to wherever they would like to go. They are carrying 30-cent fuel in their tank, and because of that they can compete very effectively against American truckers who have much higher fuel costs, and they in fact are taking away a great deal of business from our people and are killing a number of our companies, especially small companies, who beforehand had this trade.

Mr. Chairman, I appreciate the fact that you and Congressman Sunia and this subcommittee are here today to address the problem, and I would like to let you know that we have a number of people working on the State level also to address what we call the trucking problem with the truckers from Mexico.

Senator Jim Ellisor has just yesterday had signed into law a measure that will take effect on January 1, 1984. It is S.B. 80—Senate bill 80—and it will provide very stiff penalties against those who are violating the requirements for use of fuel tax permits, and it will also enable our law enforcement agencies to impound and to hold unsafe or illegal vehicles to insure payment of penalties, and this will include a great many vehicles that have come across from Mexico in violation of these fuel tax permit requirements.

I would like to salute our State representatives who are working on the problem in general, and applaud their efforts. Again, I look forward with you to receiving the testimony of our truckers, and I think it will be a very interesting morning.

Again, thank you for being here, Mr. Chairman; and, Congressman Sunia, thanks for coming up to our beautiful community. We had a good tour this morning of a water hyacinth facility that you also, Mr. Chairman, are really the godfather of, so to speak, and you have given us some real opportunity in that area, so thank you for being here, and I look forward to the hearing.

Mr. ANDERSON. Thank you, Duncan, for those nice remarks.

The bill that you introduced is H.R. 4085.

Mr. HUNTER. Yes.

Mr. ANDERSON. That bill would essentially do away with the commercial zone.

Mr. HUNTER. That's right.

Mr. ANDERSON. And as I understand it—and I suppose the rest of you would know better—the commercial zone here is basically the whole county of San Diego, isn't it?

Mr. HUNTER. Essentially, it is.

Mr. ANDERSON. So for practical purposes, an area from the border up 20 miles. That's basically what you are talking about?

Mr. HUNTER. As I understand it, it is actually 20 miles from the border of the municipality, so it would be 20 miles under the definition that I have seen from the northern border of the municipality.

Mr. ANDERSON. But your bill addresses only the commercial zone here in San Diego County.

Mr. HUNTER. No, it would eliminate for purposes of entry into the United States, the commercial zone status all along the United States-Mexican border. In other words, it would require a Mexican trucker who wants to come into the United States and do business in the United States to have an ICC operating permit, and it would basically stop what I would call the circumventing of your legislation, that allows a person to drive in even though he has no ICC permit and has not been able to get one, ostensibly to drop something off here in San Ysidro. Once he gets across the border and across the checkpoint, he heads up to Chicago or to Portland, Oreg., or wherever he wants to go and takes that run away from an American trucker. So, it would require that gentleman to have an ICC operating permit and basically not allow them to circumvent the law that is in effect right now.

Mr. ANDERSON. So it is not just San Diego County, but it includes any other place that would be a commercial zone all along the border.

Mr. HUNTER. That's right.

Mr. ANDERSON. Well, I want to commend the direction you are moving in there. Obviously, we are not voting on it today, but it sounds very good. I had dinner some time back in Los Angeles with a group of California truckers, and one of the truckers—one of the owners said, "I could take you out tonight"—and he mentioned one of the restaurants where truckers stop—he said, "there would be at least 15 illegal truckers just having dinner there tonight. They are here and they keep operating without any license, and without any regulation. They don't even think about going back."

Mr. HUNTER. That's right. Once they get across the border, it's very difficult and very expensive for our enforcement people to apprehend them and bring them back.

Mr. ANDERSON. Thank you, Duncan.

We have another Member here today. He comes from a great area. We are going to get down to hearings in his district one of these days. He is the Delegate from American Samoa, Congressman Fofo Sunia.

Fofo?

Mr. SUNIA. Thank you, Mr. Chairman. You know anything you are interested in I am also, and naturally I would like to come to Duncan's district as often and as much as possible. He is being very helpful to me in my own problems back there particularly with the Caribbean Initiative thing last year, and you may not know, Mr. Chairman, but I share the purse seiner fleet out of San Diego today. I have half of them down in my harbor, so I have a great feeling of being related to this particular community. I associate myself entirely with your remarks, Mr. Chairman. I think this is a problem that needs attention, and it needs attention now, and it is a pity that it does not have the priority that it probably demands in the negotiation of our international topics between ourselves and our neighbors.

I'm happy to be here, and I'll be glad to listen to the testimony. Thank you very much.

Mr. ANDERSON. Thank you, Fofo.

Our first witnesses this morning are two truckers. One is Mr. Frank La Salle from the La Salle Trucking Co. in Chula Vista. The other is Mr. Robert A. Curry, of California Cartage Co., Inc., in Compton, and we will have each of them make their presentations and then ask them questions.

They were here a minute ago. Oh, there's Frank.

As I mentioned earlier, over 2 years ago, we were holding hearings up in Denver, and Frank was the one who brought this issue officially to our attention, and so, Frank, we are very happy to welcome you back; and, of course, we are happy to welcome Bob Curry back because Bob comes from a city that helped me get elected when I first ran for Congress.

Mr. La Salle and Mr. Curry, will you please come up?

[Pause.]

Now, Frank, we do have your prepared remarks. Bob, do we have yours?

Mr. CURRY. No.

Mr. ANDERSON. Yours will be transcribed as you talk then.

Mr. La Salle, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

690 Anita Street, P. O. Box 3447
Chula Vista, California 92011
Phone: 424-8156

FRIDAY, OCTOBER 7, 1983

TO THE HONORABLE GLENN M. ANDERSON, CHAIRMAN AND MEMBERS OF THE OVERSIGHT COMMITTEE.

ON MAY 22, 1981, IN DENVER, COLORADO, I HAD THE PRIVILEGE OF TESTIFYING BEFORE YOUR COMMITTEE ON BEHALF OF LA SALLE TRUCKING COMPANY (MC ICC-109126) AND AS THE CHAIRMAN OF THE MEXICAN BORDER PROBLEM COMMITTEE WITH THE CALIFORNIA TRUCKING ASSOCIATION.

FOR CLARIFICATION, GENTLEMEN, I AM OF MEXICAN DESCENT, BORN AND RAISED IN SAN DIEGO, CALIFORNIA. MY PARENTS CAME FROM THE STATE OF SINALOA, MEXICO TO CALIFORNIA IN THE EARLY 1920's. I DO NOT POSSESS ANY ANIMOSITY NOR VINDICTIVENESS TOWARDS THE REPUBLIC OF MEXICO NOR THE PEOPLE OF MEXICO. I HAVE A GREAT APPRECIATION FOR MEXICO AND HAVE MANY CLOSE AND INTIMATE FRIENDS THERE.

THE ONLY PURPOSE OF MY PURSUIT OVER THE YEARS AND ACCEPTANCE OF CHAIRMANSHIP OF THE MEXICAN BORDER PROBLEM COMMITTEE FOR THE CALIFORNIA TRUCKING ASSOCIATION, WAS TO ATTEMPT TO CORRECT INJUSTICES AND BRING ABOUT CORRECTIVE MEASURES TO RESOLVE THE UNFAIRNESS AND INEQUITIES WHICH OUR INDUSTRY FACES DAILY AT THE VARIOUS UNITED STATES/MEXICO PORTS OF ENTRY DUE TO THE VAST FLOW OF UNAUTHORIZED/NON-COMPLYING MEXICAN CARRIERS AND COMMERCIAL VEHICLES FROM MEXICO: i.e., PROPRIETARY

AND EXEMPT TRUCKS WHICH OPERATE UNDER THIS UMBRELLA AS A GUISE TO ENGAGE IN ILLEGAL FOR HIRE TRANSPORTATION IN INTERSTATE/FOREIGN COMMERCE.

THERE ARE MANY INDIVIDUALS AND OWNERS OF TRUCKS FROM THE REPUBLIC OF MEXICO THAT ARE DAILY, ILLEGALLY, TRANSPORTING CARGO BETWEEN THE REPUBLIC OF MEXICO AND THE UNITED STATES. THE NUMBER OF SUCH INCIDENTS HAVE BEEN INCREASING DRAMATICALLY SINCE THE PASSAGE OF THE MOTOR CARRIER ACT OF 1980 AND EVEN SINCE I APPEARED BEFORE THIS COMMITTEE IN MAY OF 1981 IN DENVER, COLORADO.

FOR YOUR KIND INFORMATION, CONGRESSMAN, I WOULD LIKE TO CALL TO YOUR ATTENTION SEVERAL QUOTATIONS FROM VARIOUS NEWS ARTICLES TO PAINT FOR YOU A PICTURE AS TO THE GRAVITY OF THE SITUATION:

1. COMMERCIAL CARRIER JOURNAL - DECEMBER 1982

"ACCORDING TO FIGURES OBTAINED BY THE ASSOCIATED PRESS, MEXICAN TRUCK CROSSING INTO THE UNITED STATES AT ONLY THREE (3) BORDER CROSSINGS - NOGALES, ARIZONA; SAN YSIDRO, CALIFORNIA AND EL PASO, TEXAS - AVERAGED 30,422 A MONTH FOR THE NINE MONTH PERIOD BETWEEN NOVEMBER 1981 AND JULY 1982."

"U.S. CUSTOMS OFFICIALS REPORT THAT A SUBSTANTIAL NUMBER OF MEXICAN OPERATED TRUCKS VENTURE FAR BEYOND THE BORDER STATES."

"THE MEXICAN GOVERNMENT HAS TAKEN THE POSITION THAT U.S. TRUCKERS ARE NOT WELCOME IN THEIR COUNTRY, AND THEY APPEAR WILLING TO WITHDRAW AUTHORITY FOR MEXICANS TO ENTER THE UNITED STATES AS A MEANS OF MAINTAINING THAT EMBARGO."

"THE OUTRIGHT PROHIBITION AGAINST MEXICAN ENTRY FOR U.S. TRUCKERS DATES BACK TO THE 1913-1917 PERIOD AND THE MEXICAN REVOLUTION. ACCORDING TO MEXICAN TRADITION, UNITED STATES OWNED AND OPERATED RAILROADS IN MEXICO WERE USED DURING THE REVOLUTION TO TRANSPORT GOVERNMENT TROOPS FIGHTING THE REBELS. WHEN THE REBELS WON AND THE GOVERNMENT FELL, IT WAS WRITTEN INTO THE MEXICAN CONSTITUTION THE "GRINGOS" WOULD NEVER AGAIN BE ALLOWED TO INFLUENCE MEXICAN AFFAIRS."

2. SAN DIEGO UNION - THURSDAY, JULY 21, 1983

"MEXICO STILL DOES NOT ALLOW OUR TRUCKS TO HAUL INTO THEIR COUNTRY. ARTHUR BACON, DIRECTOR OF THE INTERSTATE COMMERCE COMMISSION'S OFFICE FOR THE WESTERN STATES SAID INTERSTATE COMMERCE COMMISSION OFFICIALS HOPE THE SUITS WILL DETER OTHER MEXICAN TRUCKERS "WHO TRADITIONALLY HAVE OPERATED IN THE UNITED STATES WITHOUT PERMITS."

"CALIFORNIA TRUCKERS, ESTIMATE THEY LOSE BUSINESS WORTH MORE THAN $20 MILLION DOLLARS PER YEAR TO ILLEGAL OPERATORS."

3. THE BRAWLEY NEWS - WEDNESDAY, AUGUST 25, 1982

"A MONTHLY AVERAGE OF 12,849 MEXICAN TRUCKS LOADED WITH CARGO ENTERED THROUGH THE PORT OF ENTRY AT SAN YSIDRO BETWEEN OCTOBER AND JULY."

4. SAN DIEGO DAILY TRANSCRIPT - APRIL 16, 1982

"EVERY DAY 300 OR MORE ILLEGAL TRUCKS COME ACROSS THE BORDER."

5. LOS ANGELES TIMES (SAN DIEGO COUNTY) - SATURDAY, APRIL 3, 1982

"SAN YSIDRO - EVERY DAY ABOUT 1,250 COMMERCIAL TRUCKS CROSS INTO THE UNITED STATES FROM MEXICO AT THE SAN YSIDRO, TECATE AND CALEXICO PORTS OF ENTRY. ABOUT 70% OF THE TRUCKS, ACCORDING TO UNITED STATES CUSTOMS OFFICIALS, ENTER THE COUNTRY CARRYING NO CARGO." "WHAT FEDERAL INVESTIGATORS ARE WORRIED ABOUT THESE DAYS IS HOW MANY OF THE TRUCKERS ARE PIRATES OF THE HIGHWAY, MOVING CARGO ILLEGALLY WITHOUT PROPER AUTHORIZATION TO AND FROM MEXICO."

6. SAN DIEGO UNION - JULY 29, 1982

"LEO MCCARTHY, DEMOCRATIC NOMINEE FOR LT. GOVERNOR, SAID HE WAS TURNED DOWN FLAT BY MEXICAN GOVERNMENT OFFICIALS LAST WEEK WHEN HE ASKED THEM WHETHER THEY WOULD PERMIT UNITED STATES TRUCKERS TO OPERATE IN MEXICO." "MEXICAN OFFICIALS MADE IT CLEAR THEY WOULD NOT LIFT THEIR BAN ON UNITED STATES TRUCKERS OPERATING IN MEXICO - EVEN IF IT RESULTS IN A PROHIBITION AGAINST MEXICAN TRUCKERS OPERATING IN THE UNITED STATES."

7. SAN DIEGO UNION - FRIDAY, AUGUST 20, 1982

"MCCARTHY TRAVELED TO MEXICO CITY THREE WEEKS AGO TO MEET WITH MEXICAN FEDERAL OFFICIALS WHO FLATLY REFUSED TO CONSIDER ANY CHANGE IN THEIR CONSTITUTION THAT MIGHT ALLOW UNITED STATES TRUCKERS TO OPERATE IN THEIR COUNTRY."

8. SAN DIEGO DAILY TRANSCRIPT - APRIL 26, 1982

"MEXICANS AVOID PAYING $8 MILLION DOLLARS A YEAR IN UNITED STATES FUEL TAXES IN CALIFORNIA ALONE."

9. STAR NEWS - APRIL 25, 1982

"LOSS IN STATE REVENUE ON ROAD TAXES ALONE, A CONSERVATIVE ESTIMATE WOULD BE BETWEEN $8 MILLION AND $9MILLION DOLLARS PER YEAR."

10. LOS ANGELES TIMES (SAN DIEGO COUNTY) - SATURDAY, APRIL 3, 1982

"MARTINEZ CLAIMS THAT LOCAL 542 MEMBERSHIP HAS DROPPED FROM ABOUT 800 TRUCKERS FOUR YEARS AGO TO ABOUT 350 TODAY. HE BLAMES MUCH OF THE DECREASE ON MEXICAN TRUCKING PIRATES WHO HAVE OPERATED FREELY IN SOUTHERN CALIFORNIA."

11. REPORT OF THE TRANSPORTATION WORKING GROUP TO THE UNITED STATES/ MEXICO JOINT COMMISSION ON COMMERCE AND TRADE - WASHINGTON, D.C., JULY 9, 1982

"THE MEXICAN DELEGATION RESPONDED BY REITERATING MEXICO'S LEGAL PROHIBITION -- LAW OF GENERAL MEANS OF COMMUNICATION (1948) AND FOREIGN INVESTMENT LAW (1973) -- AGAINST PERMITTING FOREIGN OWNED TRACTORS AND DRIVERS TO OPERATE BEYOND THE "BORDER ZONE" NOTING THAT NO CHANGES CAN BE EXPECTED. MEXICO RESTATED ITS ORIGINAL POSITION THAT FULL RECIPROCITY IN TRUCKING IS NOT OPEN TO DISCUSSION AND THAT IT RESPECTS THE SOVEREIGN RIGHT OF THE UNITED STATES TO RESTRICT MEXICAN MOTOR CARRIERS OPERATING IN THEIR COUNTRY." "THE EXISTENCE OF INFORMAL UNDERSTANDINGS BETWEEN SOME MEXICAN AND UNITED STATES BORDER STATES, SUCH AS THE 1956 TEXAS "UNDERSTANDING" AS REVISED, WAS ALSO DISCUSSED. THE TRANSPORTATION WORKING GROUP AGREED THAT SUCH "UNDERSTANDING" LACK ANY BASIS IN LAW, ARE UNENFORCEABLE, AND SHOULD NOT BE ENTERED INTO. FOR MEXICO, THESE "UNDERSTANDINGS" ARE UNCONSTITUTIONAL."

GENTLEMEN, YOU CAN READILY OBSERVE THE VAST AMOUNT OF ILLEGAL MEXICAN TRUCK ACTIVITY TAKING PLACE AT THE VARIOUS PORTS OF ENTRY. AT THE LOSS OF JOBS FOR OUR OWN PEOPLE: THE LOSS OF TONNAGE TO THE U.S. CARRIERS AND THE LOSS OF TAX DOLLARS TO OUR CITIES, STATES AND TO THE FEDERAL GOVERNMENT.

THE INTERSTATE COMMERCE COMMISSION OPERATING AUTHORITY TO A MEXICO CITY CARRIER (MC ICC 145192) SERVICE DATE DECEMBER 19, 1980, OVER THE PROTESTS OF SEVERAL CALIFORNIA COMMON CARRIERS. WE ALL FELT THAT WE HAD BEEN DENIED OUR LEGAL RIGHTS SO WE FILED A PETITION FOR REVIEW OF DECISIONS OF THE INTERSTATE COMMERCE COMMISSION IN CASE NO. 81-7298 IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT.

ON JUNE 22, 1983, THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT VACATED THE COMMISSION'S GRANT OF A CERTIFICATE TO AUTO EXPRESS MEXICANO. IT ORDERED THAT THE ORDER OF THE INTERSTATE COMMERCE COMMISSION BE VACATED AND REMANDED.

THIS CARRIER IS STILL ACTIVELY ENGAGING IN INTERSTATE/FOREIGN COMMERCE EVEN THOUGH THEY HAVE BEEN INSTRUCTED TO SEIZE THEIR OPERATIONS. EVEN AS LATE AS 5P.M. ON OCTOBER 4, 1983, THEIR TRAILER VAN #206 WAS SEEN RETURNING FROM THE LOS ANGELES AREA VIA A TRACTOR WITH THE WORDING:

A. EXPRESS M.
DIV. PAC., S.A. DE C.V.
TIJUANA, B.C., MEXICO

ON JUNE 23, 1983, I REQUESTED FROM THE INTERSTATE COMMERCE COMMISSION, UNDER THE FREEDOM OF INFORMATION ACT, A COPY OF THE REPORT AND RECOMMENDATION TO THE INTERSTATE COMMERCE COMMISSION, CONCERNING ILLEGAL OPERATIONS CONDUCTED BY MEXICAN CARRIERS IN THE UNITED STATES, PREPARED BY TRANSPORTATION INDUSTRY ANALYST, MR.

RICHARD P. RAUGI. MR. RAUGI BASED HIS REPORT AND RECOMMENDATION UPON AN INVESTIGATION HE CONDUCTED AT THE TIJUANA, B.C./SAN YSIDRO, CALIFORNIA PORT OF ENTRY.

I RECEIVED SAID REPORT SHORTLY THEREAFTER. THE INTERSTATE COMMERCE COMMISSION RESPECTFULLY DECLINED TO MAKE CERTAIN OTHER MATERIALS AVAILABLE TO ME AT THIS TIME; i.e., THIS COULD HAMPER THE COMMISSION'S ON GOING INVESTIGATIONS AND COULD INTERFERE WITH ENFORCEMENT PROCEEDINGS. WHILE THE MATERIAL BEING WITHHELD COULD BE RELEASED ON A DISCRETIONARY BASIS, THEY DID NOT BELIEVE THAT IT WOULD BE IN THE PUBLIC INTEREST TO DO SO AT THIS TIME.

MEMO - DATED MARCH 2, 1983

MR. RAUGI'S MEMORANDUM OF MARCH 2, 1983, UNCOVERED 76 VIOLATIONS DISCOVERED AT THE SAN ONOFRE CALIFORNIA HIGHWAY PATROL SCALE ROAD CHECK. THOSE VIOLATIONS REPRESENTED OVER 25% OF THE TOTAL NUMBER (281) OF VEHICLES INSPECTED. BASED UPON MR. RAUGI'S 41 HOURS CHARGED TO THIS PROJECT, HE UNCOVERED NEARLY 2 VIOLATIONS PER HOUR OF HIS TOTAL TIME CHARGED. THERE IS, THEREFORE, A SUBSTANTIAL NUMBER OF DOCUMENTED VIOLATIONS UNCOVERED BY THE COMMISSION.

MEMO - DATED FEBRUARY 18, 1983

MR. RAUGI'S MEMO REVEALS, THE MAJORITY OF THE VIOLATIONS WERE MEXICAN CARRIERS LACK OF OPERATING AUTHORITY UNDER THE INTERSTATE COMMERCE ACT.

MY COMMENT:

THE TYPE OF VIOLATIONS UNCOVERED, THEREFORE, CONCERN THE VERY ABSENCE OF OPERATING AUTHORITY WHICH THE COMMISSION HAS PREVIOUSLY MAINTAINED WERE EXTREMELY DIFFICULT IF NOT IMPOSSIBLE TO DETERMINE.

MEMO - DATED NOVEMBER 11, 1982

"DURING THE FIRST FEW INSPECTIONS, DRIVERS READILY ADMITTED THAT THEY HAULED TO POINTS BEYOND THE SAN DIEGO COMMERCIAL ZONE. AFTER THE SECOND WEEK, THE STANDARD ANSWER GIVEN BY DRIVERS WAS, THEY WOULD DROP THEIR TRAILER IN SAN YSIDRO AND THAT THROUGH A BROKER ARRANGEMENT, AN AMERICAN CARRIER WOULD THEN PERFORM THE UNITED STATES HAUL. (NOTE: THERE ARE NUMEROUS LOADED TRAILERS PARKED ON SAN YSIDRO CITY STREETS. GENERALLY THE TRAILERS ARE DRIVEN AWAY DURING THE NIGHT TIME OR EARLY MORNING HOURS. UNCONFIRMED INFORMATION IS THAT MEXICAN CARRIERS SOMETIME MOVE THESE TRAILERS TO U.S. POINTS. THIS INFORMATION INDICATED THAT A TRAILER WILL BE BROUGHT ACROSS THE BORDER DURING NORMAL BUSINESS HOURS AND DROPPED SOMEWHERE ON THE STREETS. LATER A TRACTOR WILL "BOBTAIL" ACROSS, INDICATING THAT HE IS GOING TO BRING A TRAILER BACK TO MEXICO. IT HAS BEEN ALLEGED THAT THIS TRACTOR WILL THEN HOOK UP TO THE PREVIOUSLY DROPPED TRAILER AND PROCEED NORTH.)

"DURING SEPTEMBER 13-17, A ROAD CHECK WAS CONDUCTED ON VIRGINIA STREET, (JUST OUTSIDE THE U.S. CUSTOMS SERVICE COMMERCIAL AREA IN SAN YSIDRO.) PARTICIPANTS WERE MEMBERS OF THE CALIFORNIA HIGHWAY PATROL, CALIFORNIA PUBLIC UTILITIES COMMISSION, THE CALIFORNIA DEPARTMENT OF MOTOR VEHICLES AND WRITER. DURING THE ROAD CHECK THERE WERE APPROXIMATELY 183 TRACTORS, TRAILERS AND TRUCKS INSPECTED. THERE WERE 103 CITATIONS FOR REGISTRATION AND SAFETY VIOLATIONS AND $4,729.00 WAS COLLECTED IN REGISTRATION FEES."

TRUCK TRAFFIC CAN LEGALLY ENTER THE UNITED STATES THROUGH THE PASSENGER GATES PROVIDING THEY DO NOT CARRY CARGO. DURING THE ROAD CHECK CONDUCTED 10/18, 22 TRUCKS ENTERING THE UNITED STATES THROUGH PASSENGER SIDE WITHOUT PROPER REGISTRATION AND/OR POSSIBLE SAFETY VIOLATIONS WERE ESCORTED

BY THE CALIFORNIA HIGHWAY PATROL TO THE VIRGINIA STREET CHECK SITE FOR FURTHER INVESTIGATION. THIS ROAD CHECK WAS CONDUCTED BY THE SAME PERSONS THAT CONDUCTED THE ROAD CHECK OF 9/13-9/17. HOWEVER, DURING THE ROAD CHECK THE U.S. CUSTOMS SERVICE SIMULTANEOUSLY CHECKED TRUCKS AT THE N/B REGULAR VEHICLE CROSSING GATES FOR THOSE PERSONS ATTEMPTING TO EVADE INSPECTION AT VIRGINIA STREET. THE RESULTS WERE AS FOLLOWS: TRUCKS CHECKED 236, OF THESE 166 WERE REFERRED TO THE CALIFORNIA HIGHWAY PATROL WHO ISSUED 118 CITATIONS, DMV COLLECTED $11,032."

PLEASE REFER TO SUMMARY REPORT OF INTERSTATE COMMERCE COMMISSION ACTIVITIES AT SAN YSIDRO - SEPTEMBER 1 - DECEMBER 31, 1982.

THE MEXICAN BORDER PROBLEM IS ON THE INCREASE AND WE FEEL THAT THE ONLY WAY IN WHICH THIS PROBLEM CAN BE CURTAILED IS BY:

1. TERMINATE THE COMMERCIAL ZONE EXEMPTION AT ALL UNITED STATES/MEXICO PORTS OF ENTRY.
2. REMOVAL OF THE IMMUNITY FROM INTERSTATE COMMERCE COMMISSION REGULATIONS OF ALL COMMERCIAL VEHICLES FROM MEXICO; INCLUDING PRIVATE CARRIAGE (PROPRIETARY) AND EXEMPT HAULING HAVING AN UNLADEN WEIGHT OF OVER 7,000 POUNDS.
3. GRANTING OF NEW AUTHORITY TO THE APPROPRIATE AGENCY OR AGENCIES (I.C.C., ETC.) SO THAT FIELD STAFFS MAY CURB MOTOR VEHICLES FOR INSPECTION AND IMPOUND FOR VIOLATIONS.
4. EXAMINE THE BROAD SPECTRUM OF FEDERAL AID TO STATES TO SEE IF ANY FEDERAL ASSISTANCE COULD BE TIED TO STATE ENFORCEMENT EFFORTS, SUCH AS; CALIFORNIA HIGHWAY PATROL, DEPARTMENT OF MOTOR VEHICLES, STATE BOARD OF EQUALIZATION, ETC.

5. PROPOSE THAT THE U.S. CUSTOMS SERVICE BE GIVEN THE RESPONSIBILITY TO PREVENT ALL MEXICAN MOTOR CARRIER TRACTORS FROM ENTERING THE UNITED STATES, EVEN IF ONLY CARRYING PRIVATE OR "EXEMPT GOODS". THIS PROPOSAL IS BASED ON THE VIEW THAT TWO MAJOR TRUCKING ENTRY PROBLEMS, "CLOSING THE PRIVATE AND EXEMPT LOOPHOLES" AND "ENFORCEMENT OF INTERSTATE COMMERCE COMMISSION REGULATIONS", CAN BOTH BE SOLVED BY THE USE OF THE U.S. CUSTOMS SERVICE AT THE BORDER EVEN BEFORE THE VEHICLE IS PERMITTED TO LEAVE THE U.S. CUSTOMS BORDER COMPOUND.

   FOR PURPOSES OF CROSS BORDER MOTOR CARRIER AND MOTOR VEHICLE REGULATION, THE CUSTOMS SERVICE OF THE U.S. TREASURY DEPARTMENT CAN CURB AND IMPOUND.

   CUSTOMS IS THE PRINCIPAL UNITED STATES BORDER ENFORCEMENT AGENCY AND AS SUCH, HAS PERSONNEL INSPECTING AND PROCESSING THE PASSAGE OF GOODS AND PEOPLE IN AND OUT OF THE COUNTRY. IN ADDITION TO ITS OWN MANDATED PROCEDURES, CUSTOMS IS OFTEN REQUIRED BY LEGISLATION OF OTHER AGENCIES TO ASSIST IN ENFORCEMENT OF THEIR ADMISSIBILITY REQUIREMENTS, AND CURRENTLY PLAY A ROLE IN ENFORCEMENT OF COMPLEX REGULATIONS FOR MORE THAN FORTH FEDERAL AGENCIES.

6. THAT AN INTERNATIONAL TRUCK DOCK BE PROVIDED AT ALL UNITED STATES/ MEXICO PORTS OF ENTRY FOR THE PURPOSE OF INTERCHANGING CARGO BETWEEN UNITED STATES AND MEXICAN CARRIERS. THIS WOULD ALSO FACILITATE A MEANS FOR U.S. CUSTOMS AND OTHER FEDERAL AND STATE AGENCIES TO MONITOR AND DISCOURAGE POSSIBLE ILLEGAL TRAFFIC AND SMUGGLING.

GENTLEMEN, THANK YOU KINDLY FOR ALLOWING ME THE OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE.

RESPECTFULLY SUBMITTED,

LA SALLE TRUCKING COMPANY

J.F. LA SALLE
PRESIDENT

JFL:al

Mr. ANDERSON. Please proceed.

TESTIMONY OF FRANK LA SALLE, LA SALLE TRUCKING CO., CHULA VISTA, CALIF.; AND ROBERT A CURRY, CALIFORNIA CARTAGE CO., INC., COMPTON, CALIF.

Mr. LA SALLE. To the honorable Congressman Glenn Anderson, the honorable Congressman Duncan Hunter, and Congressman Sunia and members of the Oversight Committee.

On May 22, 1981, in Denver, Colo., I had the privilege of testifying before your committee on behalf of La Salle Trucking Co., and as the chairman of the Mexican Border Problem Committee with the California Trucking Association.

For clarification, gentlemen, I am of Mexican descent, born and raised in San Diego, Calif. My parents came from the State of Sinaloa, Mexico to California in the early 1920's. I do not possess any animosity nor vindictiveness toward the Republic of Mexico nor the people of Mexico. I have a great appreciation for Mexico and have many close and intimate friends there.

The only purpose of my pursuit over the years and acceptance of chairmanship of the Mexican Border Problem Committee for the California Trucking Association was to attempt to correct injustices and bring about corrective measures to resolve the unfairness and inequities which our industry faces daily at the various United States/Mexico ports of entry due to the vast flow of unauthorized/noncomplying Mexican carriers and commercial vehicles from Mexico; that is, proprietary and exempt trucks which operate under this umbrella as a guise to engage in illegal for-hire transportation in interstate and/or foreign commerce.

There are many individuals and owners of trucks from the Republic of Mexico that are daily, illegally transporting cargo between the Republic of Mexico and the United States. The number of such incidents have been increasing dramatically since the passage of the Motor Carrier Act of 1980 and ever since I appeared before this committee in May 1981 in Denver, Colo.

For your kind information, Congressmen, I would like to call to your attention several quotations from various news articles to paint for you a picture as to the gravity of the situation.

Congressmen, I am not going to waste a lot of your time, but I think I will just list two or three of these just to make a point and not belabor this.

The Commercial Carrier Journal, December 1982. This is a quotation: "According to figures obtained by the Associated Press, Mexican truck crossing into the United States at only three border crossing—Nogales, Arizona; San Ysidro, California; and El Paso, Texas, averaged 30,422 trucks a month for the 9-month period between November 1981 and July 1982."

This is also a quotation: "U.S. Customs officials report that a substantial number of Mexican-operated trucks venture far beyond the border States." This concurs with what Congressman Duncan Hunter just stated a minute ago.

There is another quotation: "The Mexican Government has taken the position that U.S. truckers are not welcome in their country, and they appear willing to withdraw authority for Mexi-

cans to enter the United States as a means of maintaining that embargo."

I was back in Washington, D.C., with a group of carriers in May of 1981 for a congressional banquet, and our industry had three major problems, this being one of the major problems. At that dinner we had several Congressmen. We had Michael Deever at that meeting. We presented this problem to them. A few months after that, the President of Mexico, Jose Lopez Portillo met with the Reagan people, and this problem was brought before Portillo at that time.

President Portillo said at that time that he realized the unfairness and the one-sidedness of the situation. He also stated that he was not going to curtail it. If we wanted to curtail it—if the Reagan people were to curtail it, it would not affect our international relationship.

Now, when Robert Kohn with the U.S. Trade Representative was here in 1981 at one of our meetings here at San Ysidro, he also iterated that he got the same response in Mexico with this committee.

In item two there on your agenda there—it is dated July 21—"Mexico still does not allow our trucks to haul into their country. Arthur Bacon, Director of the Interstate Commerce Commission's office for the Western States said International Commerce Commission officials hope that suite will deter other Mexican truckers who traditionally have operated in the United States without permits.

"California truckers estimate they lose business worth more than $20 million per year to illegal operators."

Now, this isn't the long-distance hauling work entertained here. This is only in California.

The Brawley news, August 25, 1982: "A monthly average of 12,849 Mexican trucks loaded with cargo entered through the port of entry of San Ysidro between October and July."

The San Diego Daily Transcript, April 16, 1982: "Every day 300 or more illegal trucks come across the border."

L.A. Times, April 3, 1982: "San Ysidro—Every day about 1,250 commercial trucks cross into the United States from Mexico at the San Ysidro, Tecate, and Calexico ports of entry. About 70 percent of the trucks, according to the United States Customs officials, enter the country carrying no cargo."

It seems to me that when they come up here empty, they are coming to pick up a load which would normally be handled in this case by a California common carrier to return to California or to the interior of Mexico with the cargo.

"What Federal investigators are worried about these days is how many of the truckers are pirates of the highway moving cargo illegally without proper authorization to and from Mexico."

Now, back in July 29, 1982, "Leo McCarthy, Democratic nominee for Lieutenant Governor, said he was turned down flat by Mexican Government officials last week when he asked them whether they would permit U.S. truckers to operate in Mexico." "Mexican officials made it clear they would not lift their ban on U.S. truckers operating in Mexico even if it results in a prohibition against Mexican truckers operating in the United States."

I can go on here on these articles here. The loss of taxes here to the United States—just to California alone is in excess of $8 million a year on diesel fuel tax, and that doesn't include IRS taxes, federal highway. It doesn't include employee taxes or licensing and this, that and the other.

This is what we are asking for. What Mexico gives to us, we give to them. If they give an inch, we give them an inch. If they don't give at all, I say that we don't give at all either.

Now, the Mexico port of entry on Virginia Street as you might have noticed if you have taken a trip yet—or maybe you will take one this afternoon. There is a U.S. Customs yard on the American side of the border contingent with the international fence. There is also a Mexican Custom yard just south of that opening.

Now, in our case with any American common carrier, when we take a load into Mexico, we have to declare the U.S. Customs on the American side. Once we clear U.S. Customs we enter the common gate from the U.S. Customs yard into the Mexican Customs yard. At that time, that freight is either picked up either by a Mexican authorized carrier for delivery for the customer or get it loaded from the customer and bring it back to us.

Now, in our case, that Mexican Customs officer at the south gate of the Mexican compound is not going to open that gate, and we can't get beyond the confines of that Mexican Customs yard.

We are saying, "What's the problem with us? Is Mexico that much farther advanced to our systems up here? Why can't we implant to them the same treatment?

In other words, the Mexican carrier comes through to the Mexican compound in Tijuana in this case. It has got to come through the joint gate between the Mexican and the U.S. compound, and there you face a Mexican Customs man and also U.S. customs. Say he gets past both the Customs people. Then he comes into the U.S. customs yard in San Ysidro which is on Virginia Street. Then if U.S. Customs authorized or ordered not to open that north gate of the U.S. Customs yard, you have solved your problem. You have solved our problem at a minimal cost because right there you are stopping these people right at the source. You are not involving DMV or CHP or DOT or ICC or any other regulatory body. You stop them right at the source.

As Congressman Hunter stated, once you get beyond that border the sky is the limit as to where they are going to go. We know cases where they have gone, like he has stated, to Oregon, Washington—we know about cases to Florida. That's just what I know about.

I don't want to read the whole thing because it would just belabor this, but it is a loss of jobs.

The Los Angeles Times—San Diego County—Saturday, April 3, 1982: "Martinez claims that local 542 membership has dropped from approximately 800 truckers 4 years ago to about 350 today." This is as of 1982, and I think if you check now, the loss of jobs and drivers that are unemployed and the chain of reaction that this causes because it doesn't just unemploy drivers. It unemploys office personnel, repair personnel, dock personnel. It is a chain reaction. We don't feel it's right. We feel sorry for the people in Mexico

under their economic situations, but we are faced with the same thing.

A lot of carriers are dropping out of site because we cannot exist, and we cannot begin to compete with the Mexican carriers. Fuel is one item. The wage level is another item. These people don't license their vehicles up there. They might license two or three, and then they swap licenses from trailer to trailer to trailer. They don't pay tax one up here. They are a black eye to our industry on the highway because the average person that looks at a big truck, they don't stop to see if it is a Mexican truck or a Japanese truck or a Samoan truck. It's a truck. And our industry, the California Trucking Association, has tried to pass what they call a professional drivers code, but due to certain private interest groups, we haven't been able to get it through the legislature.

We do want to clean up our act on the highway, but incidents like we have seen personally just give us a black eye in the public sight.

Now, item four on the agenda, there is the report of the transportation working group to the United States/Mexico Joint Commission on Commerce and Trade, Washington, D.C., July 9, 1982:

"The Mexican delegation responded by reiterating Mexico's legal prohibition—law of general means of communication [1948] and foreign investment law of 1973—against permitting foreign-owned tractors and drivers to operate beyond the 'border zone' noting that no changes be expected."

That sounds to me like Mexico has no intention of ever allowing an American carrier to go beyond the confines of that Mexican customs yard.

"Mexico restated its original position that full reciprocity in trucking is not open to discussion." Already they have closed the door. "And that it respects the sovereign right of the United States to restrict Mexican motor carriers operating in their country," in other words in our country, so what is that telling us? They are not going to stop them, so we have to stop them.

"The existence of informal understandings between some Mexican and United States border States, such as the 1956 Texas understanding as revised was also discussed." I think Congressman Glenn Anderson—I think you mentioned or Duncan Hunter mentioned the arrangement over in Texas.

It says, "The transportation working group agreed that such understanding lack any basis in law are unenforceable, and should not be entered into. For Mexico, these understandings are unconstitutional."

Gentlemen, you can readily observe the vast amount of illegal Mexican truck activity taking place on the various ports of entry. At the loss of jobs for our own people, the loss of tonnage to the U.S. carriers and the loss of tax dollars to our cities, States, and to the Federal Government.

The Interstate Commerce Commission granted operating authority to a Mexico City carrier [MC ICC 145192] service date December 19, 1980, over the protests of several California common carriers, namely California Cartage Co., GI Truck Co., and myself. We felt that we had been denied our legal rights, so we filed a petition for review of the decisions of the Interstate Commerce Commission,

Decision in case No. 81-7298 in the U.S. Court of Appeals for the Ninth District or Ninth Circuit.

Now, we did this—three carriers did this at a tremendous expense to us, not only in money, but in time and in documentation and in this, that, and the other.

Now, you will recall here that the ICC gave them authority in December 1980. On June 22, 1983—this year—the U.S. Court of Appeals for the Ninth Circuit vacated the Commission's grant of a certificate to Auto Express Mexicano. It ordered that the order of the Interstate Commerce Commission be vacated and remanded.

This carrier is still actively engaging in interstate/foreign commerce even though they have been instructed to cease their operations. Even as late as 5 p.m. on October 4, 1983, their trailer van No. 206 was seen returning from the Los Angeles area via a tractor with the wording: "A. Express M." which is Auto Express Mexicano Div. Pac., S.A de C.V. Tijuana, B.C., Mexico."

On June 23, I requested from the Interstate Commerce Commission under the Freedom of Information Act a copy of the report and recommendation to the ICC concerning illegal operations conducted by Mexican Carriers in the United States prepared by transportation industry analyst, Mr. Richard P. Raugi. Mr. Raugi based his report and recommendation upon an investigation he conducted at the Tijuana/San Ysidro, Calif., port of entry.

I received the field information package. They deleated some information that they thought would not be in the public interest to give it to me, and also it could complicate their taking action against carriers due to these findings.

I know that I could demand it by law, but (a), we felt that we didn't want to make their job harder than it already is, so we got quite a bit of information anyhow from them.

On a memo dated March 2, 1983, from Mr. Raugi, it stated that Mr. Raugi's memorandum dated March 2, 1983, uncovered 76 violations discovered at the San Onofre, Calif., highway patrol scale road check. These violations represent over 25 percent of the total number of 281 vehicles inspected. Based upon Mr. Raugi's 41 hours charged to this project, he uncovered nearly two violations per hour of his total time charged. There is, therefore, a substantial number of documented violations uncovered by the Commission.

On another memo dated February 18, 1983, Mr. Raugi's memo reveals that the majority of the violations were Mexican carriers lack of operating authority under the Interstate Commerce Act.

Like I said, "I don't want to belabor a lot of this."

During September 13-17, a road check was conducted on Virginia Street just outside the U.S. Customs Service commercial area in San Ysidro. Participants were members of the CHP, the Cal PUC, the California Department of Motor Vehicles, and the writer. During the road check there were approximately 183 tractor trailers and trucks inspected. There were 103 citations for registration and safety violations and $4,729 was collected in registration fees.

Now, we have some recommendations. One step has already been taken by Congressman Duncan Hunter.

The Mexican border problem is on the increase, and we feel that the only way in which this problem can be curtailed is by—and I have listed several items here. I would like you to just bear with me a minute here.

Item 1, which Congressman Duncan Hunter has just stated: "Terminate the commercial zone exemption at all United States/Mexico ports of entry."

Item 2, removal of the immunity from ICC regulations of all commercial vehicles from Mexico including private carrier which is proprietary and exempt hauling having an unladen weight of over 7,000 pounds.

As I stated earlier, many individuals/firm—proprietory and exempt—from Mexico come up to the United States under the guise of delivering exempt commodities—produces, et cetera—and also supposedly the proprietary is going to pick up his own merchandise only to engage in the for-hire transportation of interstate/foreign commerce freight.

Now, there is no reason why a United States common carrier should not be entitled to handle the freight like our counterparts in Mexico have handled our freight. For example, if a load of produce comes to the border here, there is no reason why if that man is detained there, why that load could not go to Cal Cartage or La Salle or GI or any authorized U.S. common carrier for delivery. The only thing we would need would be legal means so we could put a permit or some type of permit on that Mexican trailer whereby we can haul it to destination and return it origin without having to license that particular trailer for 30 days or 90 days or a year because we might not see that trailer for another year or 6 months, so economically when we license, for one trip, it costs about $150 for one trip, but it was a load that had to move, and economically it just was not feasible.

This is why we say that we need some kind of an allowance—say trip permit—whereby we can—our response would be put a trip permit on that Mexican trailer for delivery and for picking up a load and returning back to origin.

Item 3, granting of new authority to the appropriate agency or agencies [ICC, et cetera] so that field staffs may curb motor vehicles for inspection and impound for violations.

It is my understanding that the only person who doesn't need a reason to stop for inspection or detain a vehicle is the Customs Department of the U.S. Treasury Department, but I am told that the CHP cannot off the cuff pull a truck over to the side of the road for inspection, so their hands are tied. If they catch a truck in violation, they can't even fine them or put them out of service or take legal action against them, so their hands are tied again.

Either the ICC or the DOT or whoever should have authority should have authority to—like it says here—"Curb motor vehicles and also inspect them and also put them out of service or impound them."

Item 4, examine the broad spectrum of Federal aid to States to see if any Federal assistance could be tied to State-enforcement efforts, such as CHP, DMV, State Board of Equalization, et cetera.

Item 5, propose that the U.S. Customs Service be given the responsibility to prevent all Mexican motor carrier tractors from entering the United States even if only carrying private or exempt goods. The reason that we include private or exempt goods is the reason that I mentioned about the guise. It happens every day. This proposal is based on the view that two major trucking entry

problems, "closing the private and exempt loopholes" and "enforcement of Interstate Commerce Commission regulations" can both be solved by the use of the U.S. Customs Service at the border even before the vehicle is permitted to leave the U.S. Customs border compound.

For purposes of cross-border motor carrier and motor vehicle regulation, the Customs Service of the U.S. Treasury Department can curb and impound.

Customs is the principal U.S. border enforcement agency, and as such has personnel inspecting and processing the passage of goods and people in and out of the country. In addition to its own mandated procedures, customs is often required by legislation of other agencies to assist in enforcement of their admissibility requirements and currently play a role in enforcement of complex regulations for more than 40 Federal agencies.

Item 6, another alternative that an international truck dock be provided at all United States/Mexico ports of entry for the purpose of interchanging cargo between the United States and Mexican carriers.

Now, as you know, there are plans for the development of a new international gate up on Otay Mesa within the next year or two. This would be an opportune time to consider this.

This would also facilitate a means for U.S. Customs and other Federal and State agencies to monitor and discourage possible illegal traffic and smuggling.

I close my presentation here. I say, gentlemen, thank you kindly for allowing me the opportunity to testify before this committee. Respectfully submitted, La Salle Trucking Co., Frank La Salle.

Now, I made some notes here. Some of the things I have already covered. There are carriers here—one is called—another one is P-E-C-S-A, ICC 141313. His application is in abeyance until the reciprocal issue is determined. Still, I've got photographs—I've got pictures where I have seen trucks of his at the San Onofre scale. I called it to the attention of Inspector Mann with the ICC office in Los Angeles at that time. This was back in April 23, 1982.

The Auto Express Mexicano situation that I just mentioned to you—they are operating illegally because after July 1, 1983, they are not supposed to operate in interstate commerce, but they are still doing it, and this is over and above ICC orders and also the U.S. Court of Appeals.

We have a list of many, many loads that these people are transporting because our people are at the border on a daily basis.

Also, there has been several sham American corporation, being set up as a subterfuge to get around the Motor Carrier Act of 1980 and the moratorium.

I won't go into the names here, but there are guys who we have turned in to the Interstate Commerce Commission protesting their applications, and these guys are setting up sham corporations just to get around the ICC law regarding permits.

Now, I understand from my attorney back in Washington that the Interstate Commerce Commission is finally recognizing rule 4 of the Federal Rules of Civil Procedures for the freight at various harbors like in Los Angeles and San Diego.

Mr. ANDERSON. Frank, I think we are going to have to wrap this up. We are running out of time.

Mr. LA SALLE. OK. Just give me a minute, sir.

Mr. ANDERSON. OK, you have it.

Mr. LA SALLE. Also Mexican trucks avoid CHP scale by going up 15 north of Escondido.

Actually, I really think it has been in the back of the ICC's mind to kind of deter this problem by using Customs officials. I have copies of letters here from the ICC to Congressmen which say, "We are endeavoring to work out an arrangement with customs officials in an effort to control the Mexican traffic."

Another letter was sent to Bill Myers, one of our carriers in San Diego by Mr. McFarland. "This agency is in concert with DOT and U.S. Customs Service in developing enforcement programs for use along the border."

The last and final one is a letter written to me by Kenneth Pierson, Director of the U.S. Department of Transportation. "We plan to conduct training class for U.S. Customs Service staff working at the border stations."

Gentlemen, this is my presentation. Again, I appreciate your time and effort and what you are attempting to do for us.

Mr. ANDERSON. Thank you, Frank.

Before we ask you questions, we will hear from Mr. Curry. Some of the questions may be directed to both of you.

So, Bob, the floor is yours.

Mr. CURRY. Very briefly, what Frank has told you is very true, and I will confine my remarks to my own company because that's easier for me to do and it is very specific.

Over the last 2 years, our business in the San Diego area—and we are a principal hauler of cargo that travels between this country and Mexico—is down over 35 percent.

Some small portion of it may be involved in the situation that exists in the economy today, but most of that in all honesty is business that we have lost that we used to haul going into Mexico. We used to move unfinished furniture parts from San Francisco to Tijuana. We don't haul it any more. We know that cargo is still moving, and it is being picked up by Mexican national trucks.

We used to move copper tubing in large volumes from the southern California area to go into Mexico. We don't haul it any more.

We at one time participated in the movement of automobile wheel rims that come out of Mexico to northern California. We don't haul those any more.

Our number of employees is down over this period of time from about 51 to 38. Again, some small portion of it may be due to the economy, but the majority of it in all honesty is due to the fact that we don't participate in the Mexican traffic as much as we used to.

It is a serious situation. There are hundreds of Mexican trucks moving over the highways picking up the cargo today that they weren't handling 3 or 4 years ago. It's possible that the peso situation has caused these people to seek work with a greater vigor than they ever did before, but our own steamship business that we used to handle, we now see—and I should say that it is not only confined here—we now see business in the Los Angeles harbor moving

from Los Angeles harbor to the city of Los Angeles and being moved by people we never heard of before who have Mexican trucks, so they have a trendency to take a load up, pick up a load, and they may stay in the particular area and move cargo for 2 or 3 days, probably because in some cases they are earning cash money, and they need the money so bad that they just stay and continue to work.

Frank's specifics are real. The problem is real, and we appreciate very much what you did for us before in the bill that you tacked on in Congress, but in all honesty, it hasn't done a great deal of good in order to stop this situation.

I would be happy to answer any questions that you have.

Mr. ANDERSON. Thank you, Bob. I do have a few questions, and I know that the other Congressmen do, as well.

A moment ago, Frank mentioned a meeting that was held with President Portillo and people from our side of the border. That's where the statement came out:

> Mexico restated its original position that full reciprocity in trucking is not open to discussion and that President Portillo agreed that what was happening was unfair, but that he wasn't going to do anything about it, and that if anybody was going to do anything about it, we would have to do it. Our administration would have to do it on our side of the border.

Now, is that basically what President Portillo said, that the agreement was unfair, but that he wasn't going to correct it on his side? If any thing was done, it would have to be done by us, but that there wouldn't be any hard feelings?

Mr. CURRY. Yes, sir. That was what they said.

Mr. ANDERSON. Asking for direct reciprocity, that they would not be sore at us, because we do have this problem when we deal with our State Department. They always say that we have many big things that we are working on between the two governments, and we don't want to do something that is going to make them sore on something that may be of more importance, wherever that might be.

Now, its reported that President Portillo said that he recognized the problem and would not be unhappy if we, the United States, were to take some action on our own part. Then what is stopping us from taking that kind of action?

Mr. LA SALLE. Sir, you are asking the question that we have been asking ourselves for a long time. This comment that I made to you was handed down to me by Tom Schumacker, our general director of the California Trucking Association. He is very much involved back in Washington.

Mr. ANDERSON. Were those statements made in public?

Mr. LA SALLE. No, sir.

Mr. ANDERSON. They weren't?

Mr. LA SALLE. No, sir, the only thing that I said to you—I took it out of different newspaper articles.

Mr. ANDERSON. There is the Los Angeles Times quoted there.

Mr. LA SALLE. The second document there, Congressman—the one that is a summary of a report of the Interstate Commerce Commission I didn't go into. You might read it——

Mr. ANDERSON. We are going to have some questions for the chairman in a few minutes on that.

Mr. LA SALLE. Because when we went back to Washington on May 6, 1981, Mr. Portillo was back there about 4 or 5 months after that, and what I stated to you was what he stated to the Reagan people which Tom Schumacker, our executive director, stated to us in one of our meetings.

When Robert Kohn was down here in February——

Mr. ANDERSON. And Robert Kohn is——

Mr. LA SALLE. Robert Kohn at that time was the U.S. Treasury representative. There was the Commerce Department, DOT—and I think Mr. McFarlane was out here and other people. Bob at the meeting—we had at U.S. customs office—ultimately said that he was told the same thing in Mexico almost word-for-word—that they realized the one-sided, the unfairness of the situation, but he was not going to stop the Mexican trucks from coming across the border, and if we wanted to stop them, we, the United States, could stop them, and it would not upset our international relationship.

Mr. ANDERSON. The article in the San Diego Union said:

> Mexican officials made it clear they would not lift their ban on U.S. truckers operating in Mexico even if it results in a prohibition against Mexican trucks operating in the United States.

Mr. LA SALLE. Yes, sir.

Mr. ANDERSON. Now, one other question on that same article. It said, "About 70 percent of the trucks"—these are the ones coming across the border from Mexico—"according to the U.S. customs official enter the country carrying no cargo."

Now, when they bring an empty truck, do they have some order which shows what they are going to pick up on the other side? Or do they just come up and stay? I think it is mentioned in the next sentence that many of these truckers are "pirates of the highway." The gentleman who I had dinner with that night said that if you go the local truck stop—he didn't use the word "pirates" but I assume he is talking about the same people. He said there were illegal truckers who were here who were just staying here, who were hauling not between Mexico and places in the United States, but staying in the United States and going from Los Angeles to San Francisco or Phoenix or wherever they might go, but they were operating illegally here, and they were based in the Los Angeles area, but they were from Mexico.

Now, are most of those 70 percent of the trucks staying here, or are they continuing on up to Los Angeles and further, picking up loads and bringing it back?

Mr. LA SALLE. Congressman, I think they mean to imply there—I can give you actual cases where trucks from Ensenada, Mexico, which is like 65 miles south of here go to Los Angeles or to Gardena and pick up mostly petroleum products and either bring them to this port of entry or sometimes for convenience they go to Tecate. There are loads of steel—many loads of steel—that come across from—I think he mentioned Cucamonga and other points like this that go to Ensenada, or go to Tijuana or to any place in Baja, Calif. These guys come up here empty. They come up there empty to pick up a load to go back into Mexico.

Now, there is one case where Transportes Californianas was picked up by the California PUC a few years back, and I was called

by the local officer of the California PUC stating that they nabbed one of my friends. I said, "What did you do to him?" They said, "Well, we took him to court and fined him $50," which wouldn't even buy my wife and I a decent dinner, and then they sold a California PUC permit statewide in PUC traffic—but this is at a State level, and we are directing that to Senator Jim Ellis.

But like Bob Curry just stated, once these guys get across the border, Congressman, they can work for Congressman Duncan Hunter to haul from here to El Cajon all day long at a reduced rate that is ridiculous to us. They can go to the Los Angeles area, like Bob stated, and haul—to the Los Angeles territory, and no one can stop them. Again, they pay no taxes. They are stealing jobs, and they are just prostituting our industry. I hate to use that word, but that's what they are doing.

Mr. ANDERSON. I have some more questions, but I will hold them until the other members have had a chance.

Duncan, why don't you go next?

Mr. HUNTER. Thank you, Mr. Chairman.

It looks to me that one message that we have been given from your testimony, both Frank and Bob, is that the control point or the point at which we can most cost effectively control the illegal traffic is the border because they have to come through one of those ports of entry, either at Tijuana or Calexico, or one of the other few points of entry along the American-Mexican border.

It appears to me also that we do not have the personnel to enforce the law at this point.

I think, Frank, you mentioned the spot checks that have been taken, and I think that is somewhat dramatic in the one check that was conducted on Virginia Street, September 13 through 17 by the California Highway Patrol, the Public Utilities Commission, the California Department of Motor Vehicles, that there were 183 tractor trailer trucks inspected and there were 103 citations for registration and safety violations. In other words, over half of those people were not in compliance with the law, and yet we don't have the people to enforce that law, so I think my question is twofold.

No. 1, would you agree that we need to have more personnel enforcing whatever laws we come up with? We need more personnel at the border; and, No. 2, do we need to do something with this commercial zone status that has been used basically to circumvent the legislation that the chairman has enacted into law that deprives the truckers from Mexico or puts a moratorium on ICC operating permits that are given to them?

Do we need to do something to deprive them of this commercial zone status that gets them into the country; and, No. 2, do we need to have more people to enforce the law that we are going to be working with?

Mr. LA SALLE. I would say that the answer to both of those questions, Congressman, is in the affirmative. I would say, yes.

Mr. HUNTER. OK.

Mr. LA SALLE. The commercial zone like you stated is one of our recommendations, and we feel from the standpoint of economics that the logical people to perform this action at the point of entry is U.S. customs, since we don't involve other agencies in the Government, whether State or Federal.

Mr. HUNTER. OK. You know, that's another problem that we have talked about, Mr. Chairman, in talking with a number of the agencies. We have a number of agencies—PUC and ICC and Customs—working in different capacities at the border, and you will have a case where the customs people simply do not have enough people to check, for example, for insurance or where the ICC people don't have enough people down here to be checking on permits. It would seem that the one thing we need is some type of an identification system that would require the Mexican truckers to comply with our laws.

Let's say we have the requirement for ITC operating permits. We have the requirement for insurance. We have the requirement for some type of rudimentary safety inspection. We need to have some type of system where would-be operators in America would have to go down and meet these requirements in our office at the border, and after they have met those requirements, get a sticker or some type of other—some other type of identifying or something—some readily identifiable emblem that they can put on their truck on their windshield or something where then whether it is an ITC guy or a PUC guy or a border patrol or whatever, our people can say that this gentleman or this particular truck has met the requirements.

We are going to let him in. He has got the green sticker or the red sticker on his truck, and we can't check for insurance because we are Customs and we have these other duties, or we are ITC and stretched too thin.

I think that one problem we have had has been a coordination problem between our agencies.

Could you comment on that, gentlemen?

Mr. CURRY. Well, Congressman, to go back to your original question to Frank, today, as you know, we have what's called deregulation, and deregulation means that there is really no enforcement by the ICC as far as I'm concerned—and I am not speaking now of the Mexican-border problem. I'm speaking of enforcement in any particular area.

If you are going to try to enact the law as you described, you are going to have to come up with a tremendous amount of people to try to enforce it, and if you can acquire those people with Federal funds, I think that the law probably would be fine, but if the situation is as it is today, then I don't think the law is going to do any good at all.

Mr. HUNTER. You don't think we could come up with enough people at the border to check those trucks?

Mr. CURRY. Well, I'm not saying that. I'm saying that in the past the problem has always been as you described it: many agencies and each agency having their own particular area of expertise and not overlapping each other.

If you could find a way to take out some of the bureaucracy, if you will, and put it down to customs, then maybe you can do it, but I have doubts that you are ever going to do that.

Mr. HUNTER. OK, thank you.

Mr. CURRY. I'm trying to give you an honest answer. I think that's what you want.

Mr. HUNTER. Sure. We appreciate your candor.

Mr. ANDERSON. Absolutely.

Mr. LA SALLE. I would like to make a comment, and I don't mean this the way it might sound, but, again, I am of Mexican descent and I have parents from Mexico, and I don't want this to be taken wrong, but our people are not accustomed to doing things according to law. They are going to go over, under, what have you—upside-down—whatever you want.

You can put up—I see you smiling, but it is the truth. You can put a sticker. You can put whatever you want on that truck. Right now, you are supposed to have license plates. They don't have them.

You put a sticker on a windshield with a kind of a code, then our people are going to find a way to duplicate what you intend to put on that windshield. They might even put it on a piece of plexiglass—a thin piece of plexiglass, to put it like it is on the windshield—the inside of the windshield—so who is going to get up there and make sure that it is attached to their windshield.

I say that by nature—and I know how my people think, and, in fact, I wish I had the capability, but you guys are too rough on us. I've got a lot of ideas. But that's my comment to that.

Mr. ANDERSON. Congressman Sunia.

Mr. SUNIA. I've got no questions. Thank you.

Mr. ANDERSON. I have a couple of questions. I think I am going to direct them to you, Bob, but Frank if you want to comment on them, you can.

Bob, do you operate down into Mexico at all within the 20-kilometer commercial zone established by the Luis Cortinas decree of 1955, and if not, who or what prevents you from operating in that zone?

Mr. CURRY. We don't operate in Mexico. We only go into the so-called free zone which is just a few blocks in or wherever they transfer the equipment.

Mr. ANDERSON. How far would that be below the border?

Mr. CURRY. Eight blocks.

Mr. LA SALLE. Could I——

Mr. ANDERSON. Surely.

Mr. LA SALLE. That used to be the way, Bob. Now, they don't allow our drivers to go beyond the Mexican customs yard.

Mr. CURRY. OK.

Mr. LA SALLE. So you have been——

Mr. ANDERSON. So you don't go down there at all?

Mr. CURRY. No; why don't you let me describe something that occurred very shortly back in 1972—and I think it probably is an easy way to describe how the operation is in——

Mr. ANDERSON. You go ahead, and then I'll finish my question.

Mr. CURRY [continuing]. Mexico.

The ILWU was on strike back in 1972, and many of the ship lines put their ships into Ensenada. The cargo had to be drayed from Ensenada to San Francisco and to Los Angeles, and we performed a lot of the drayage, but we performed the drayage only from San Ysidro. Our equipment was allowed to go into Ensenada. Mexican truckers followed our trailers down by the hundreds. They loaded the trailers, and they brought them back up, and they gave

them to us here after they came through the customs yard, but we were never allowed to go in.

The automobile carriers—they discharged several shiploads of imported automobiles. The automobile carrier equipment can't be separated tractor from trailer. It is all one large unit, and the way they finally allowed the automobile trailer people to take their equipment in is they had to put a Mexican driver and pay for him in the rider's seat, and he was allowed to then go down and take it in.

No; we don't get to go into Mexico at all.

Mr. ANDERSON. Are there any circumstances that might allow you to operate in Mexico such as in an emergency situation? I have heard this word "emergency situation."

Mr. LA SALLE. Not to my knowledge.

Mr. ANDERSON. Not to your knowledge? Have you heard of any—because I understand that they do under emergency situations. I was going to ask who makes that decision and what is an emergency situation.

Mr. LA SALLE. I don't know of any such emergency situation, Mr. Chairman. We have dealt for many, many years. The only type of equipment that is allowed under certain conditions to go into is like in the strike of Baja, for instance, at the end of 1971 and the first part of 1972.

That was automobile carriers specialized equipment like, for example, if you have got a special rig that nobody else has and they don't have that you have got to clear through Mexican customs, the Federal registry of automobiles across the line and different agencies—will authorize the Mexican Highway Patrol to allow under very, very extreme situations to use that truck in Mexico, but, like Bob says, you have to take on a Mexican driver to ride in the passenger seat of that tractor. You are not permitted to go down there yourself.

I can give you an actual situation in my case a few years back in Tecate, Mexico. We load beer in Tecate, and have for years, so the truck man from Tecate brewery told my driver, John Fernandez, to bring that trailer to the brewery on his responsibility. We finally got to the brewery, and the brewery loaded that truck, and en route from the brewery back to the Mexican customs area at Tecate, Mexico is only about six or seven blocks, and we were impounded. We were impounded for like 10 to 12 to 14 days. We were fined—we called it a fine—we call it mordida—at that time $5,000, and if we didn't pay that $5,000, they could impound our rig, and at the end of a year they would offer it to us at a value they set on it less 10 percent.

So the brewery on our behalf paid the equivalent of $5,000. So, no, we don't have free access beyond the Mexican customs yard adjacent to the border fence.

Mr. ANDERSON. Now, Bob, could you compare your general operating costs to those of a typical Mexican carrier, and elaborate on what this might mean if there were to be true competition on the international trafficking?

Mr. CURRY. Well, he has obviously got costs much lower than ours.

Mr. ANDERSON. Well, even if there were full reciprocity so that our truckers could go below and the Mexicans could come above, wouldn't they still have a competitive advantage on costs related to fuel and labor?

Mr. CURRY. It would be substantial, and I think it would be ridiculous for me to even try to describe it. The wage level might be 25 percent of our wage level. The price of fuel is much cheaper. There is no tax on the fuel, and repairs and maintenance also would be substantially lower in cost because their labor rates are lower.

Mr. ANDERSON. So full reciprocity which we are hoping for still gives them a pretty good competitive advantage.

Mr. CURRY. Absolutely.

Mr. ANDERSON. Would you agree that it is your ultimate desire to gain entry into Mexico and not simply to prohibit Mexican entry into the United States?

Mr. CURRY. Yes.

Mr. HUNTER. Mr. Chairman, could I ask some followup on your question?

Mr. ANDERSON. Surely.

Mr. HUNTER. In light of the fact that it is—that you are not going to be able to compete effectively against Mexican truckers because of the fuel costs and the disparate labor costs, why then is it your goal to gain access to Mexico because, obviously, if we could ever convince the Mexicans to change their constitution to give you access—and I understand that the law is in the constitution—it is unconstitutional for American truckers to drive on Mexican highways—they are going to demand an absolutely open road on our side, and from what you say, you are not going to be able to compete with them, so why do want that situation is what I am saying?

Mr. CURRY. I answered the question because we are deprived of it right now, and it is a one-sided situation.

Mr. HUNTER. Sure.

Mr. CURRY. I don't think it will ever come out, so all I was doing was saying, "Give us one or the other," really.

Mr. HUNTER. What you are saying is that they have access to our roads right now.

Mr. CURRY. Yes.

Mr. HUNTER. Mostly illegally, but they are still putting you out of business.

Mr. CURRY. And I am just saying that we would not have as much to complain about if we had the access to Mexico, but since we don't have that access, we really have both of our hands tied behind our backs. They would be in a better position to sit and talk at the level in Washington and say, "No, no, we don't care what our labor costs are. They can come on in." We could at least solicit the freight. We could do a lot of things, but I don't think that is ever going to happen.

In lieu of that happening, I think that I would rather see you shut the border down, as Frank said, because at least then you wouldn't have to go and spend millions of dollars and people trying to regulate something that I don't think you are going to be able to regulate, because I think they are so smart that whatever you come up with, they will come up with a better way to come in.

Mr. LA SALLE. Could I expound on that, Mr. Congressman? From our standpoint and different people I have talked to, I personally would have no desire as a company to traverse the Republic of Mexico from the first standpoint that any carrier would be at a tremendous disadvantage.

Item 1, we don't know the laws. Item 2, the laws in Mexico are interpreted by the guy who has the book in front of him. He is going to interpret that law to his convenience.

Like in our case in Tecate of the $5,000, there was no legal basis for us to pay the $5,000, but you either pay it or your driver could go to jail, and your equipment could be impounded forever.

There is not a carrier that I know of—especially a small carrier—that would have the money or the time to be bailing themselves at the different State levels in Mexico—whether it is Mexico City or wherever.

Then also there are cliques in Mexico, as you well know, where these guys work together in their politics.

I have got a real close friend in a political position in Transportes and Comunicaciones. I say, "Next time you see that red and black carrier of Duncan Hunter's, I want that thing nailed," and he is going to do it, and Duncan Hunter is not going to have a chance to get that truck out, so you don't have enough money, and you don't have enough time to fight it.

Mr. CURRY. Yes, Frank makes a good point there. I said that my answer was sort of tongue-in-cheek if you will because of the fact that we can't go into there.

To elaborate just quickly, during 1972 when all of our equipment was going in there, when the strike finally ended and we were regrouping and gathering everything back, eight of our trailers were involved in accidents with Mexican drivers. All eight were impounded, and we never got one of the pieces of equipment out of Mexico, and we spent several thousand dollars trying to get the equipment out, and we just didn't get the equipment out.

Mr. ANDERSON. Well, thank you very much, Bob and Frank, for your presentation.

Mr. LA SALLE. Thank you.

Mr. HUNTER. Thank you, gentlemen.

Mr. ANDERSON. Our next witness we probably should have had first because we are meeting in his district, and he could have welcomed us here. That is the Honorable Uvaldo Martinez, Jr. He is the city councilman of San Diego for this district and it includes where we are sitting in at this time.

Mr. Martinez? As I just said, you should have been first so you could have welcomed us here——

TESTIMONY OF HON. UVALDO A. MARTINEZ, JR., CITY COUNCILMAN, EIGHTH DISTRICT, SAN DIEGO, CALIF., ACCOMPANIED BY TERRY BAIRD, DEPUTY FIRE MARSHAL, SAN DIEGO FIRE DEPARTMENT; AND HAROLD ROSENBERG, SENIOR TRAFFIC ENGINEER, CITY OF SAN DIEGO

Mr. MARTINEZ. No; actually, I was just as interested in the testimony as you were.

Thank you very much, Mr. Chairman and members of the committee.

For the record, I am City Councilman Ulvaldo Martinez, district 8, city of San Diego.

Mr. Chairman, thank you for coming to San Diego to see firsthand some of the problems we have had with illegal trucking activity.

I would like to take these few minutes briefly to outline the problem as it exists in San Diego—in particular, this border community of San Ysidro.

I am not exaggerating when I say the influx of trucks from Mexico has brought with it a continuous stream of troubles for our community.

The trucks are mainly semis and they are noisy and polluting. They add significantly to the congestion on the roads, and they obstruct the view of drivers. But the problem is far more serious than that. They carry hazardous and inflammable materials. Sometimes it is common gas and fuel oil, but many carry propane, liquid chlorine, and ethyline dibromide—a material that is not only poison but also believed to be carcinogenic.

The semis require entry papers and often will sit idle for days until the paperwork is prepared. Sometimes they wait on commercial roads, sometimes on adjacent vacant lots—without the property owners' knowledge or authorization—and sometimes on residential streets in neighborhoods.

It is a constant fear that some act of vandalism or a vehicular accident will trigger a disaster.

While awaiting and hoping for favorable action on Congressman Hunter's newly introduced bill, which would go far toward addressing the city's concerns, I intend to propose two local ordinances to regulate these abuses. Currently, we have a law that prohibits trucks from parking for more than 3 hours on residential streets. The law, however, does not apply to all other streets. As a first step, I hope to make this citywide.

Second, through our zoning practices, we hope further to regulate the storage and parking of trucks on private property. It's not enough to limit the parking on public streets if they can park for days on unfenced, unguarded vacant lots.

We are doing our best through municipal legislation, but we urgently need your help with stronger, more effective measures through our Federal Government.

I do have one additional suggestion which might alleviate the situation on an interim basis. It is to simply create a parking lot in an isolated area for these trucks. If we can't stop the influx, at least we can restrict them to areas that would minimize the potential safety hazards. Lacking Congressman Hunter's amendments, however, this would have virtually no effect in stopping the kinds of staging activities we will hear about from trucking industry and have heard from trucking industry representatives.

With me today are representatives from the fire department and the city traffic and engineering department, should you have any specific questions.

Thank you for your time and for sharing our concern.

Mr. ANDERSON. Thank you, Mr. Martinez.

Just to clarify it a little bit, you say that the semis require entry papers and often sit idle for days until the paperwork is prepared. Now, these are semis that have already crossed the border. They have cleared our customs, and now while they are processing the paperwork for customs—is that it? Is that when they are then parked on the streets of San Ysidro after they are already in this country. They have already been cleared for the most part. Would you want to clarify that a little bit——

Mr. MARTINEZ. Yes. I will ask our fire marshal, who has that responsibility.

Mr. BAIRD. The Congressman mentioned some of the problems with the parking in the area. It is the fact that it could also be a truck in the United States hauling cargo into Mexico that doesn't have the proper clearance papers going in here.

Mr. ANDERSON. I recognize it going that way.

Mr. BAIRD. It can be the parking with the vehicles coming into the United States is basically being brought across the border, parked, and waiting for either a relief crew to come in—a new tractor trailer or a new tractor to be hooked up to the semi.

This morning, I drove to San Ysidro earlier before I came down here, and on the La Bodega area, about 85 semitractors or 85 vehicles were parked down there, of which 42 are parked right now or were at 9 this morning parked without having a tractor trailer hooked up or a tractor hooked up to them. They are in cases flammable-liquid carriers, liquid propane gas tankers that are sitting there off the streets where San Ysidro PD can't touch them.

Some of them are sitting around for weeks at a time. We had an instance a couple of months ago right down the street here from where we are at where a flatbed truck with 9 1-ton cylinders of liquid chlorine gas sitting off the street on private property. It was raining, and the truck's holdup mechanism was slowly sinking into the ground, and you are sitting there with nine tons of liquid chlorine gas with a possibility of that truck tipping over. The San Diego PD came in and we finally got the truck moved out of there.

At any time in the border area, with the fact that the border gates are only open from 8 a.m. to 5 p.m., 5 days a week, that trucks coming up into the United States or going into Mexico—either way—are sitting here for 16 hours at a time in the San Ysidro area waiting to get across the border.

Now, the new border crossing at Otay Mesa is going to help us tremendously, but after seeing the plans on it for the first time a couple of weeks ago when I was up there, there is one very glaring omission that is up there. We have a place on the mesa for the new truck stop where everything is going to be isolated away from a populated area, and yet we still have what Councilman Martinez said, "No place to park a vehicle when they have to change crews or change drivers."

What is needed up there is 5 to 7 acres of paved area, fenced, where these vehicles are coming in, if there is a mixup somewhere in the paperwork, that we can park them someplace—park them safely and park them sanely.

Mr. ANDERSON. Thank you.

I am going to need your names and your titles for the record.

Mr. BAIRD. My name is Terry Baird.

Mr. ANDERSON. Baird—B-A-I-R-D?

Mr. BAIRD. B-A-I-R-D.

Mr. ANDERSON. B-A-I-R-D—and you are the——

Mr. BAIRD. I am the deputy fire marshal of the San Diego Fire Department.

Mr. ANDERSON. The deputy fire marshal, and your name is——

Mr. ROSENBERG. I am Harold Rosenberg, senior traffic engineer, also with the city of San Diego.

Mr. ANDERSON. Thank you.

Duncan.

Mr. HUNTER. Thank you, Mr. Chairman.

I want to thank you, Uvaldo, for the leadership that you have taken in this area, and I would like to expand a little bit on your suggestion regarding the requirement for a parking lot.

Reflecting back on our testimony from Mr. La Salle earlier, apparently, there are a number of people who come up here also for the purpose of picking up business in the United States and not necessarily for simply making the run back and forth to Mexico, and it would appear that probably a great many of those people are truckers who are thinking about making an illegal run, basically one within the United States, and they don't have any home base.

If they come up and are waiting to pick up a piece of business up here, they don't have a shop or a company that they can call their home base, and because of that I would think that possibly some of this traffic is attributable—some of these parked vehicles and trailers are attributable to that type of an operation, but I would like to ask you would you contemplate if we had a parking lot along the border charging a certain 24-hour rate or weekly rate for people to park the vehicles there?

Mr. MARTINEZ. Well, certainly, I think any facility always offers an opportunity for revenue. However, at this particular point, we would just be satisfied to have the facility, and the actual financing or how we would implement it on a local level is something obviously that would be discussed by probably the city council or those agencies involved as a whole.

I think that facility would go a long way toward addressing the particular health-and-safety aspects that we are concerned about, with what we consider to be illegal traffic or trucking activity from Mexico, and I think it would also go—at least initially deal with some of the concerns that some of the members of the industry have expressed, so I think from an initial perspective or at least for an initial step forward moving in that direction to deal with a problem on a comprehensive basis, I think that facility is an integral part. At least it gives us some centralization of the issue and whether or not we could use it for a revenue source or how the financing would actually take place, that's something that we could work out somewhere down the road.

However, I think the second border crossing certainly offers us an opportunity to deal with that whole issue.

Manpower has been a continual issue in discussions with local business people just right here in San Ysidro who, as you know, were hit very hard by the peso devaluation in just an entirely different business orientation, but nonetheless, manning of the border station, the customs station, the Virginia Street crossing and what

is being perceived as a threat of the new facility of relocating that manpower to another area, may in fact cause an even greater problem here in the Virginia Street crossing.

I think that certainly is an important aspect, and it should be taken into very heavy consideration.

Mr. HUNTER. You think that we should take this into consideration in constructing the border crossing at Otay Mesa and perhaps try to make a Federal acquisition for the land that would be necessary, or is the city contemplating doing them themselves and running this operation themselves?

Mr. MARTINEZ. Well, at this particular point, we feel that because the present second border crossing is still within the unincorporated area of the county, we really still do not have direct jurisdiction. We think as part of the second border crossing is the Federal complex, and because of the relationship between the commerce and the international trade that is going on there, at least at this point, it seems to be within the Federal environment. However, that's not to say at some date, they city could not become involved.

Mr. HUNTER. Thank you.

Mr. ANDERSON. Fofo.

Mr. SUNIA. No questions.

Mr. ANDERSON. Just a little followup on Duncan's question on parking: Now, you are going to introduce a city ordnance to restrict parking citywide on residential streets—you already have a law against parking on certain residential streets.

Mr. MARTINEZ. That's correct.

Mr. ANDERSON. And you are going to do the same thing for the business areas. Don't you, right now, have some limitation on parking, even on your business streets?

Mr. MARTINEZ. Yes; we do. That's a 72-hour restriction.

Mr. ANDERSON. 72 hours.

Mr. MARTINEZ. Right.

Mr. ANDERSON. That's 3 days.

Mr. MARTINEZ. It's 3 hours within the residential, and 72 hours within any other overall street. What we are going to do is——

Mr. ANDERSON. That's pretty liberal. I don't know of any place else where we have those kinds of parking limits—usually they are 2 hours.

Mr. MARTINEZ. That's part of our problem.

Mr. ANDERSON. Thank you very much.

Mr. MARTINEZ. Thank you, Mr. Chairman.

Mr. ANDERSON. Our next witness is the Chairman of the Interstate Commerce Commission, Hon. Reese H. Taylor. We are very honored to have Reese back in California. I can kid him a little bit because he is really a Californian who got lost over in Nevada before he went to Washington, so we are glad to have you back, Reese.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF REESE H. TAYLOR, JR., CHAIRMAN
INTERSTATE COMMERCE COMMISSION
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE OF THE HOUSE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
ON MEXICAN TRUCKING OPERATIONS IN THE UNITED STATES

October 7, 1983

MR. CHAIRMAN:

I am very pleased to be here today to present my individual views on Mexican trucking operations in the United States and related issues. This hearing you have scheduled is extremely timely in view of the seriousness of the situation, particularly with regard to unauthorized operations, which appear to be far more extensive in the State of California than in the other States along the Mexican border.

The primary concern in this regard is, of course, to insure safe operations to protect U.S. citizens and shippers who are affected by accidents involving Mexican carriers. I will also discuss the almost total lack of access to Mexico for U.S. carriers. Ultimately, this situation affects not only our carriers, but also shippers and consumers in both Mexico and the United States who bear the costs of inefficiencies created by unduly restrictive international motor carrier entry policies. In addition to my statement, I have included as appendices a translation of the text of the Luis Cortines Decree and a list of Mexican motor carriers licensed by the Commission, as well as data on cross-border traffic and the cost of policing border points.

OVERVIEW

In defining the problem, there are three areas that should be addressed. One area of concern is the issue of reciprocity. Mexican carriers are able to enter various segments of the U.S. market with relative ease, whereas U.S. carriers are effectively barred from offering similar competitive services in Mexico. While licensed Mexican carriers are few in number, there are substantial opportunities for Mexican carriers to engage in exempt operations; such operations are not affected by the recent moratorium included in the Bus Regulatory Reform Act of 1982. A second area of concern is unauthorized Mexican operations. This presents an economic threat to our trucking industry but, more importantly, it poses a safety hazard, which is the third area of concern - safety and insurance.

Before examining each of these issues in greater detail, I would like to provide a brief background. With the passage of the Motor Carrier Act of 1980, we adopted an economic regulatory policy significantly less stringent than that of Canada or Mexico. The differences in entry policy created an imbalance in the competitive opportunities available to U.S., Canadian and Mexican motor carriers to transport international traffic. Mexican and Canadian motor carriers were able to enter the U.S. market with relative freedom and offer single-line rather than joint-line service, thus potentially diverting the U.S. portion of international traffic from U.S. carriers. Because of more restrictive entry policies in Mexico and Canada, however, United States motor carriers were not able to offer similar competitive

services. The heightened competition in the U.S. market, along with the recession, made our trucking industry particularly sensitive to this potential diversion of international traffic.

In response to this situation, Congress included a provision in the Bus Regulatory Reform Act of 1982, Section 6(g), which imposes a two-year moratorium on the issuance of certificates or permits to carriers domiciled in Mexico or Canada or owned or controlled by Mexicans or Canadians. The moratorium may be extended by the President beyond the two-year period in the case of any contiguous foreign country (or political subdivision) that substantially prohibits grants of authority to persons from the United States. The moratorium may be lifted or modified by the President, after notifying Congress, upon a determination that it is in the national interest to do so. Congress must be notified at least 60 days in advance in an instance where the contiguous country is substantially prohibiting U.S. carriers from receiving authority.

Following imposition of the moratorium, the ICC required all applicants for operating authority to attest that they were not owned or controlled by persons domiciled in a contiguous foreign country. Upon signing the Bus Regulatory Reform Act into law on September 20, 1982, President Reagan suspended the moratorium in the case of Canada and later, on November 29, 1982, he removed the moratorium completely insofar as Canada is concerned. The ban remains in effect for Mexican motor carriers.

RECIPROCITY

There is no reciprocity in Mexico for U.S. carriers. Mexican law prohibits foreign-owned commercial vehicles from operating within Mexico, except for a 20-kilometer border zone authorized by the Luis Cortines Decree of 1955.[1] In actuality, the only significant operations permitted within the zone are in the Nuevo Laredo area. There, U.S. tractors, trailers and drivers are permitted to proceed to custom clearing areas and "maquiladoras" located within 20 kilometers of the border. In fact, all international traffic in the Laredo/Nuevo Laredo area is generally moved southbound by eight to ten U.S. cross-border carriers and northbound by three Mexican cross-border carriers. At the other border crossing points, U.S. carriers are virtually barred from operating in the border zone by local rules and practices. For example, Baja California does not permit U.S. trucks past the Mexican border compound. There are also other impediments to U.S. carriers operating in Mexico. U.S. carriers from Calexico, CA, have indicated that, even when they obtain approval from Mexican authorities to perform limited operations in Mexicali, other local and state authorities demand "facilitative payments" or otherwise interfere with their operations. Only in very unusual circumstances or on an emergency basis have U.S. carriers ever been permitted to operate beyond the border zone into the interior of Mexico.

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[1] A translation of this decree is set forth in Appendix A.

By contrast, there are substantial opportunities for Mexican carriers to conduct lawful operations in the United States. There are approximately 12 Mexican motor carriers currently holding permanent authority from the ICC.[2] All of these authorities were issued prior to the moratorium. Of the 12 carriers, three hold authority to transport property, and the remainder are passenger carriers. (See Appendix B for a list of the licensed Mexican carriers).

Since all of the Mexican carriers licensed by the ICC are small Class 3 carriers, they are not required to file annual reports with the Commission. Therefore, there is no way for the Commission to readily determine the volume of freight or revenues generated by these carriers from U.S. traffic. However, considering their number and the limited scope of their operating authority, it is unlikely that the licensed Mexican carriers are lawfully handling a significant volume of regulated U.S. freight.

Mexican carriers can also operate legally in the United States without authority from the I.C.C. under the exemptions contained in the Act. These opportunities extend not only to the handling of international traffic, but U.S. traffic as well. Particularly with respect to the international traffic, Mexican carriers gain an advantage by being able to offer single-line service which can divert the U.S. portion of the movement from U.S. carriers.

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[2]Prior to the moratorium, the Commission was only able to determine the nationality of a carrier by domicile. Therefore, our figure does not include any U.S. domiciled carriers that may be owned or controlled by citizens of Mexico.

There are essentially three major classes of exempt operations:

(a) transportation of exempt (primarily agricultural) commodities;

(b) private carriage; and

(c) commercial zone or terminal area operations.

Statistics are not available with regard to the volume of exempt traffic being handled by Mexican carriers. However, recent compliance surveys give some indication as to the relative number of cross-border exempt movements. An ICC compliance survey in November 1982 of 250 trailers entering the U.S. at San Ysidro revealed that 33 percent contained exempt commodities and 41 percent contained regulated commodities moving to a point within the commercial zone. A subsequent survey of 383 trailers revealed that 22 percent contained exempt commodities and 47 percent involved commercial zone operations.[3]

UNAUTHORIZED OPERATIONS

It is difficult to determine the extent of unauthorized operations by Mexican carriers in the United States or the volume of traffic they divert from U.S. carriers. As I mentioned earlier, the problem appears to be more pervasive in the California area than in the other border States of Texas, New

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[3]The data on exempt operations by Mexican carriers does not include exempt southbound international movements or movements between points solely in the United States.

Mexico and Arizona. It is my understanding that several California trucking groups alleged last year that there were approximately 300 Mexican carriers operating illegally within the California border area.

Recent I.C.C. compliance efforts have been directed toward vehicle checks of Mexican carriers crossing the border. These checks disclosed 117 instances of suspected unlawful operations out of 2,482 vehicles checked during an eight-month period. While this amounts to only 5 percent, the figures are far from conclusive since they do not include unauthorized operations between U.S. points north of the border area, and it is extremely difficult to determine the validity of an alleged private carrier movement. While they have no conclusive proof, ICC investigators are of the opinion that a sizeable number of these alleged private carrier movements constitute unauthorized operations.

SAFETY AND INSURANCE

An issue related to the problem of unauthorized operations is the matter of safety and insurance. The primary concern in this regard is to protect U.S. citizens, in general, and shippers, in particular, who are affected by accidents involving Mexican carriers. This, I might add, is my chief concern and the area that I feel must be addressed.

It is difficult to determine the extent to which Mexican carriers are in violation of U.S. insurance and safety requirements. This is because of the difficulty involved in identifying the carriers and monitoring their compliance. Those Mexican

carriers that are licensed by the ICC are generally not considered to be a problem, since they are subject to the ICC's insurance requirements and their safety records appear to be generally comparable to U.S. carriers. Nor are Mexican carriers operating under the agricultural commodities exemption a serious concern, since the agricultural haulers ordinarily serve only produce brokers located within five miles of the border.

There is a major problem, however, with regard to the safety fitness of Mexican carriers operating under the commercial zone exemption, in view of the fact that such operations are subject only to hours of service and accident reporting requirements. This problem becomes particularly significant when the carriers perform unauthorized operations beyond the commercial zone. In addition, Mexican carriers often are not familiar with all applicable U.S. safety requirements, and it is difficult for safety officials to determine whether there is any level of continuous safety compliance after Mexican carriers enter the United States.

This area has recently been addressed by the Surface Transportation Assistance Act of 1982, which imposes requirements that most Canadian and Mexican for-hire carriers and private carriers transporting hazardous materials carry proof of insurance in each vehicle. These requirements were implemented by the Federal Highway Administration's Bureau of Motor Carrier Safety in regulations published on February 7, 1983 (49 CFR 387.7).

The new requirements, which you were instrumental in enacting, are a major and important step in assuring that Mexican carriers have insurance coverage. Unfortunately, some problems remain. Many Mexican carriers entering the U.S. are either engaged in private carriage of non-hazardous materials or they operate vehicles with gross weight ratings under 10,000 pounds. In these instances, the operations are not covered by the new financial responsibility requirement. Many of the 1900 vehicles checked for insurance compliance during the joint ICC-DOT-Customs survey last April, for example, were not required to meet the new insurance requirements, although 101 were denied entry to the United States for failure to comply.[4] Enforcement efforts are also complicated by Mexican carriers' claim of an exemption, the validity of which is difficult to detect. Finally, Customs inspectors do not yet have the necessary training to help enforce the new law effectively on a day-to-day basis, although I understand that additional training for these inspectors is now being scheduled.

AVAILABLE OPTIONS INCLUDING LEGISLATIVE RECOMMENDATIONS

On the question of reciprocity, the objective is to achieve equivalent competitive opportunities for U.S. and Mexican carriers. While the optimal solution would be to open up the Mexican market to U.S. carriers, the efforts by our government to

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[4]The survey included a series of motor carrier checks at San Ysidro and Calexico, CA and Nogales, AR.

accomplish this end over the past few years have not yet been successful. Consultations between the U.S. and Mexican officials were conducted under the auspices of the U.S. - Mexico Joint Commission on Commerce and Trade. The last series of meetings took place in Washington in mid-summer 1982, before the imposition of the moratorium. As a result of the change in administrations in Mexico, together with the severe financial difficulties which that country is experiencing, there has been little interest on the part of Mexican officials in holding additional meetings. While it is unlikely that bilateral negotiations will succeed in gaining reciprocal access for U.S. long-haul carriers into the interior of Mexico, there have been some potentially positive developments for short haul, cross-border trucking.

The U.S. delegation to the Transportation Working Group of the U.S. - Mexico Joint Commission on Commerce and Trade is attempting to schedule a meeting before the end of this year. One of the major U.S. objectives will be to obtain a Mexican commitment for implementation of the 1955 Luis Cortines Decree which would enable U.S. carriers to operate in the Mexican border zone. Since few U.S. carriers have expressed an interest in operating in the Mexican interior, implementation of the Luis Cortines Decree would provide the access to Mexican markets which U.S. carriers generally seek.

The options which are available to the United States to correct the present imbalance include the following:

Under its present authority, the Commission could, in various ways, re-examine the availability of the commercial zone

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exemption to Mexican carriers along the U.S. - Mexican border. In an appropriate proceeding, the Commission could determine whether the operations of the Mexican carriers within the commercial zones are actually "under common control, management, or arrangement for a continous common carriage" and therefore outside the scope of the commercial zone exemption. In a proceeding some years ago, the Commission determined that certain local cross-border operations along the Texas-Mexican border fell within the commercial zone exemption. To update this matter, the Commission could reexamine the situation to determine whether current operations are being properly conducted under the commercial zone exemption, and if not, the Commission could overrule the presumption established in the proceeding 15 years ago. However, such a proceeding would have little effect on bona fide cross-border commercial zone operations and would have no effect on commercial zone operations conducted by Mexican carriers solely on the U.S. side of the border.

Alternatively, the Commission could consider assertion of jurisdiction over commercial zone operations along the Mexican border. If an adequate record were developed to justify an exercise of jurisdiction over such operations by the Commission, then carriers would have to apply for authority under regular application procedures. Mexican carriers would not be able to obtain the authority if the moratorium were still in effect.

Another possibility which could be considered in an appropriate rulemaking proceeding is the possible redefinition of the commercial zones along the U.S. - Mexican border to exclude points in Mexico and thereby preclude Mexican carriers from operating under the exemption on cross-border movements. To justify such action, the Commission would have to fully explain the need for exercising jurisdiction over cross-border commercial zone operations, as opposed to other commercial zone operations, and differentiate the Mexican and Canadian commercial zone situations. As a practical matter, such a redefinition of the commercial zones would allow continued exempt operations by Mexican carriers on the U.S. side of the border.

Under the present statute, the Commission has the legal authority to assert jurisdiction, in whole or part, over commercial zone operations. However, all of the approaches present difficult questions of law and fact.

There are various specific legislative actions which could be taken to limit or deny access to U.S. markets by Mexican carriers. Existing operating authority of Mexican carriers could be revoked, although, as mentioned earlier, the operating authority presently held by Mexican carriers is quite limited in nature.

The duration of the moratorium could be extended. If the moratorium expires, Mexican carriers could obtain broad operating authority under the eased entry provisions of the Motor Carrier Act of 1980. While an extension of the moratorium would not

alleviate any of the current inequities, it would prevent Mexican carriers from making additional inroads into U.S. markets.

Mexican carriers could be prohibited from engaging in private carriage, hauling exempt commodities, and/or operating under the commercial zone - terminal area exemptions.

It should be recognized that removal of one or more of these exemptions would be a drastic measure which would, to varying degrees, limit Mexican carrier access to U.S. markets. Also, for every Mexican carrier handling a shipment into the United States, there presumably is a U.S. shipper or consignee, and in some instances, a U.S. carrier that is responsible for or benefits from the current arrangement. There is also the more general, overriding issue of whether these possible restrictive measures conflict with other U.S. policies, including this Nation's relationship with Mexico. Accordingly, before any action of this nature is taken, it would be essential to obtain and carefully analyze the views of shippers, local communities, truckers, and pertinent U.S. agencies.

I will discuss the remedies for correcting the problem of unauthorized operations and safety and insurance together, since some of the options apply to both.

One suggested means to contain the problem of unauthorized operations, as well as satisfy safety and insurance concerns, would be to limit the scope of operations that Mexican carriers are allowed to perform in the United States. Those in favor of the approach believe that a ban on Mexican carriers crossing the border could be simply and effectively enforced by Customs offi-

cials. On the other hand, such a policy would conflict with other policy goals. A limiting of access through the removal of one of the exemption provisions may tend to increase the incentive for unauthorized operations, but it would aid enforcement efforts by reducing the number of Mexican carriers that can lawfully cross the border.

Another alternative would be to develop a program by which border crossing officials could easily determine, through the use of a windshield sticker, the status of Mexican freight entering the United States. Because of the nature of the various exemption provisions, however, it is virtually impossible to determine the status of freight movements at the border without causing substantial delays at the commercial crossings. Therefore, to be effective, any type of sticker or identification system would require the full cooperation of Mexican officials.

Another option would be to increase our enforcement efforts, which would require additional personnel. Due to resource constraints, we cannot hope to cover all crossing points at all times. However, unannounced and intensive checks at border crossing points, conducted on a periodic basis by joint ICC-DOT investigatory teams, would provide an effective and highly visible means of enforcing U.S. law. Mexico currently utilizes a second checkpoint which is located a short distance from the border. We could adopt such a system, thereby reducing potential delays at the border due to compliance inquiries. For safety and insurance purposes, Customs officials could also be trained to enforce proof of financial responsibility requirements. (For

data on cross border traffic and estimates for policing border crossings, see Appendix C).

Additional options and legislative alternatives for the safety and insurance area would be to extend coverage of safety regulations and insurance requirements. A major problem of enforcing compliance with Federal safety laws at the border is the ability of Mexican carriers to claim that they are operating under the commercial zone exemption. This exception to the general safety requirements could be removed through legislation. Mexican carriers engaged in private carriage of non-hazardous materials or operating small vehicles could be required to meet some level of financial responsibility, even though corresponding U.S. carriers do not have this requirement. This would ensure that all Mexican carriers have some level of insurance coverage, and such a requirement would improve enforcement of the current law.

There is a bill currently pending in the Senate, S. 1108, the "Highway Safety Act of 1983," which could aid significantly in enforcement efforts. The proposed legislation contains a provision which would require annual safety equipment inspections for all commercial vehicles weighing 10,000 pounds or more. As the bill moves through the legislative process, the inspection provision could be clarified to insure that it includes commercial motor vehicles from contiguous countries which are operating in the United States.

S. 1108 was ordered reported by the Senate Committee on Commerce, Science, and Transportation on September 21, 1983. As you know, a companion measure, H.R. 2693, is being considered by the House Public Works and Transportation Committee.

CONCLUSION

Of the options previously discussed, closing the U.S. Market is seen by some as the easiest solution for all three aspects of the problem - reciprocity, unauthorized operations, and safety and insurance. However, from other standpoints, this is the least desirable course of action and the one most likely to result in a significant deterioration in U.S. - Mexican relations.

There appears to be little hope, at this point in time, for successful bilateral negotiations, but the effort must be continued. Of the remaining available actions, asserting jurisdiction over commercial zone operations or redefining the commercial zone to exclude points in Mexico seem to offer possibilities. As discussed earlier, however, these options are not without drawbacks. Any further action in this area should be taken in conjunction with increased enforcement. I do not believe that any plan which is ultimately adopted can succeed without additional resources to police unauthorized Mexican operations.

This concludes my statement, and now, Mr. Chairman, I will be pleased to respond to any questions you may have.

TRANSLATION OF LUIS CORTINES DECREE **APPENDIX A**

DIRECTIVE WHICH WILL FACILITATE THE EXPEDITING OF POLICIES FOR APPLICATION AND IDENTIFICATION OF THE MOVEMENT OF AUTOMOTIVE VEHICLES WHICH TRAVEL IN NORTH AMERICA WHICH OPERATE IN FOR HIRE SERVICE IN THE POPULATED BORDER AREAS OF NORTH AMERICA AND WHOSE TITLE WILL BE: "SERVICE NATIONAL BOUNDARY" (published in the "official Notice" of October 6, 1955, being signed by the President of the United States of Mexico, Adolfo Ruiz Cortines.

Referring to Article One, Sections VI, paragraph A and Article VII, paragraph A, Sections II, VI and XIII, 48, 149 and 153, Section V of the Highway Law of General Transportation, 219 and 250 of the regulation in the Chapter: Use of Highways Ordinance mentioned above, Article 8, Section I and VI,-150 of the Regulation of Transportation on the National Highways and in the Articles of Confederation, as covered in the Convention over the Regulation of Interamerican Automotive Traffic with the Resolutions which were made effective in Mexico on April 14, 1949, which were contained in the corresponding Instrument of Ratification; and in the use of the authority conferred in Section I of Article 89 of the Political Constitution of the United States of Mexico; and

CONSIDERING:

I. That along the length of the line dividing Mexico and the United States of America, through those places authorized by both countries for the passage of Persons and Things, it is important and necessary to recognize Movement of Automotive Traffic, whether it crosses from Mexico or from USA, which operate as Public Busses or as Cargo carriers in the Urban Areas of the Border Populations of Mexico and USA;

II. That this movement of Automotive Vehicles resulted in a Mutually Imperative Economic Order (Treaty) for Mexico and USA, which objectives is the Promotion and Freeing of International Commerce between both countries;

III. That this International Commerce has again necessitated the establishment of Traffic Offices that Mexico and USA had established in the Border Cities along the length of the Boundary Line of both countries, at all times being the clear areas for the distribution of Imported and Exported goods which are registered with the two countries and which are transported by Automotive Transport.

IV. That loading and unloading services of merchandise Exported or Imported from either Mexico or USA, are physically impossible to realize unless the Automotive Transports are free to enter, crossing the Border Line, in the Urban Areas of the respective Border Cities;

V. That in order to implement the Social Disinvolvement and Economic Development of the Country it is Indispensible that International Commerce have the same (privilege), that it not be obstructed in any manner, because the Executive of Transportation ought to provide the administrative enforcement of the ideal methods, it is therefore proposed;

VI. That the Chief Executive realizes that the most effective method of attaining the objectives mentioned above, is to design a sign meant to identify and control the automotive vehicles which are based in USA that operate as Public Passenger and Cargo Companies between the urban areas of the Border Cities of Mexico and USA;

VII. That it is the function of the State of Mexico to impose the regulations to protect the public interest over the patrol and control of transportation on the general public roads;

VIII. That the Chief Executive, through the Secretary of Commerce and Public Works, impose the specific regulations that are necessary to control, police, and coordinate the Transport Industry under Federal jurisdiction;

IX. That for the specific application of its laws, the State of Texas has considered itself to have the sole authority over motor vehicles based in Mexico that operate on the border line in said entity (state of Texas), and that operate in the urban zones of the Border Cities located in its (Texas') territory, the use of signs of that State;

X. That the expressed reasons, arrived at Convention that preceded are dictated by legal precepts, which conclude that vehicles which are based in USA that operate as Public Passenger and Cargo Companies, are equally entitled to cross as those vehicles which are based in Mexico that operate as Public Passenger and Cargo Companies (to cross) into (or operate into) the Border Cities of USA.

XI. That Article 8, of the Code of Transportation on the National Highways, and in particular those of Federal License, establishes that, "No motor vehicle will be able to travel on the highways nor in the cities without being provided with the APPROVED SIGN issued by the Secretary of Commerce and Public Works.

Because of the expressed and founded (reasons) I have had prepared the following:

DIRECTIVE

1. It is order that the Secretary of Commerce and Public Works in order to procede to the creation of a Sign (or License Plate) to control and identify the movement of those vehicles based in USA which operate as Public Passenger and Cargo Companies in the Border Cities of Mexico, and whose title (the sign's) will be "Federal Border Service."

2. The Sign which is based on this directive, will have the term of one fiscal year.

3. In order that those vehicles based in USA be able to cross the boundary line and operate as Public Passenger and Cargo Companies between the Urban Areas of the Border Cities of Mexico and USA, they must account for such activity with the Sign "Federal Border Service" referred to in the above paragraphs.

4. Those vehicles authorized by the Sign mentioned, will only be able to conduct that activity that is authorized by this Directive, they will not be authorized to another class of service nor to cross the city limits of the Border Cities of Mexico.

5. In order that the vehicles mentioned in the above paragraphs can make use of the franchise which is given, it will be absolutely necessary that their owners satisfy the following requisites:

a. That they obtain legal license from the Secretary of Commerce and Public Works for the conduct of Federal Transportation Businesses, offices located in the Mexican Border Cities.

b. That they certify that the vehicle in question is to be used in transportation of cargo for the Public;

c. That they certify the legal ownership of said vehicle(s);

d. That said vehicles meet the safety requirements and liability insurance requirements.

6. Once the Secretary of Commerce and Public Works representative in a Border City is satisfied that requirements are met, he will issue a temporary Sign, which is revocable, under authority of the General Law of Highways and Commerce, and this temporary Sign will substitute for the regular Sign. The permission granted by the temporary sign will be the same as granted by regular Signs.

7. A fee of 1,200 pesos is charged per Sign or Sticker issued, as well as for circulation cards and mentioned permission. The payment is to be made to the office of the Secty. of Commerce and Public Works in the city where the Sticker/Sign is issued.

8. The Secty. of Commerce and Public Works will determine at a later date the decision about reciprocity which may be required, because Northern Mexican Border Cities will apply this Directive, and will also decide at a later date about Public Passenger Stage companies based in USA.

Only Transitory

The present decree will become effective fifteen days after it has been published in the official Journal.

Effective Suffrage Re-election Number - given in the residence of the Federal Executive Power, in Mexico city D.F. on the fifth day of September 1955 - Adolfo Ruiz Cortines (Signature) Secretary of Finance.

Antonio Corrillo Flores (Signature) Secretary of Exterior Relations

Luis Podilla Nervo - (Signature) Secretary of Interior

Angel Carvajal (Signature) Secretary of Economy.

Gilberto Loyo - (Signature)

APPENDIX B

MEXICAN CARRIERS LICENSED BY THE I.C.C.*

Property carriers holding active, permanent authority:

1. Manuel Marin, (MC-129610) holds contract carrier authority to provide the following services for two companies in Mexico:

   Tin plate and fiberboard containers, from points in Los Angeles, Riverside, Orange, and San Bernardino Counties, CA, to U.S. - Mexican Boundary line at San Ysidro, CA.

2. Transportes Internacionales De Baja California (MC-135533) holds contract carrier authority to provide the following service for one company in Mexico:

   Kerosene, jet fuel, solvent, aviation gasoline, turbine fuel, and lubricants, from points in Los Angeles County, CA, to U.S. - Mexican Boundary line at or near Calexico and San Ysidro, CA.

3. Transportation De Juarez (MC-141265) holds contract carrier authority to provide the followng service for five companies in Mexico:

   Liquefied petroleum gas, from Mohshaus, Wink, Kermit, Seminole, Ropesville, Snyder, Odessa, and Ozona, TX, and Artesia, Maljamar, Jal, and Eunice, NM, to U.S. - Mexican Boundary line at or near El Paso, TX.
   Note: this authority was due to expire May 8, 1983.

4. Auto Express Mexicano (MC-145192) holds common carrier authority to provide the following service:

   General commodities (except explosives, household goods, commodities in bulk, and those requiring special equipment) between points on the U.S. - Mexican Boundary line, on the one hand, and, on the other, San Diego, Los Angeles, and San Francisco, CA.
   Note: On June 22, 1983, the Ninth Circuit vacated the Commission's grant of this authority. On August 1, 1983, the Commission issued a decision implementing the court order and indicating that the foreign reciprocity issue would be considered when the moratorium ends.

* Prior to the moratorium, the Commission was only able to determine the nationality of a carrier by domicile. Therefore, this list does not include any U.S. domiciled carriers that may be owned or controlled by citizens of Mexico.

II. Passenger carriers holding active, permanent authority:

1. Transportes Fronterizos Del Norte (MC-128553) holds authority to operate over described regular routes

   (a) between the port of entry at or near Rio Grande City, TX, and Rio Grande City, TX.

   (b) between the port of entry near Roma, TX, and Rio Grande City, TX.

2. Transportes Monterrey Cadereyta Reynosa (MC-138565) holds authority to operate over described regular routes

   (a) between port of entry near Brownsville, TX, and Brownsville, TX.

   (b) between port of entry near Hidalgo, TX, and McAllen, TX.

3. Transportes Del Noresta (MC-128887) holds autority to operate over described regular routes

   between port of entry near Rio Grande City, TX, and Rio Grande City, TX.

4. Transportes Del Norte (MC-93130) holds authority to operate

   (a) over described regular routes between Brownsville, TX, and U.S. - Mexican border near Brownsville, TX.

   (b) over irregular routes between Laredo, TX and U.S. - Mexican border near Laredo, TX.

5. Auto Transportes Unidos de Nuevo Laredo (MC-107455) holds authority to operate over a described regular route

   between Laredo, TX, and port of entry near Laredo, TX.

6. Autobuses Anahuac (MC-109655) holds authority to operate over a described regular route

   between Eagle Pass, TX, and port of entry at Eagle Pass, TX.

7. Transportes Chihuahuenses (MC-110060) holds authority to operate over described regular routes

   (a) between El Paso, Tx and port of entry at El Paso, TX.

   (b) between port of entry near Presidio, TX, and Presidio, TX.

   (c) between port of entry near Columbus, NM, and Columbus, NM.

8. Omnibus de Mexico (MC-114554) holds authority to operate over described regular routes

   (a) between port of entry near El Paso, TX and El Paso, TX.

   (b) between port of entry near Presidio, TX, and Marfa, TX.

9. Servicios Unidos Autobuses Blancos Flecha Roja (MC-114739) holds authority to operate over a described regular route

   between Laredo, TX, and port of entry at Laredo, TX.

APPENDIX C

U.S. CUSTOMS SERVICE
BORDER CROSSING POINTS
INBOUND TO U.S.A.

	1981		1982	
	TRUCKS	BUS	TRUCKS	BUS
TEXAS				
Progresso	13,340	10	8,662	32
* Brownsville	79,934	4,277	170,449	2,228
Hidalgo	34,319	28,061	36,086	25,310
Rio Grande City	6,094	1,830	5,604	1,510
Roma	44,302	72	45,654	103
* Laredo	225,921	26,987	222,744	28,630
Eagle Pass	6,222	5,655	6,441	5,209
Del Rio	7,198	5,963	5,055	4,981
Presidio	21,706	2,912	5,343	1,235
Fabens	15,140	796	10,062	296
* El Paso	299,496	38,963	112,047	55,400
NEW MEXICO				
Columbia	7,850	810	10,038	1,089
ARIZONA				
Douglas	13,247	10	10,940	11
Naco	1,896	30	2,697	35
* Nogales	84,208	314	92,312	435
Sassabe	2,193	0	1,957	0
Lukeville	791	41	678	31
San Luis	3,006	63	3,879	65
CALIFORNIA				
Andrade	1,640	0	1,132	0
* Calexico	135,106	1,879	179,886	2,190
Tacate	49,091	131	42,538	66
* San Ysidro	122,828	24,723	224,944	23,193

COST

These estimated annual figures are based on one staff member at a border crossing poing.

Space	- 300 sq. ft. @ $10.00 per sq. ft.	$3,000.00
Supplies	- Photocopy machine, etc.	900.00
Telephone	-	600.00
Salary	- (average)	30,000.00
Benefits	- (30% of salary)	9,000.00
GSA Vehicle	- ($280 per month, 1,000 miles @ .135)	4,900.00
Per diem	- (4 days per month)	2,000.00
		$50,400.00

ADD

Attorney Cost		
Salary	$40,000.00	
Benefits	12,000.00	
Travel (4 days)	2,000.00	
	$54,000.00	
		$54,000.00
		$104,400.00

A. IF

22 Investigators	$1,108.800.00
2 Relief Investigators	100,800.00
2 Attorneys	108,000.00
	$1,317.600.00

B. IF

6 Investigators at major points	$302,400.00
2 Relief Investigators	100,800.00
1 Attorney	54,000.00
	$457,200.00

Mr. ANDERSON. Please proceed.

TESTIMONY OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY RICHARD RAUGI, TRANSPORTATION INDUSTRY ANALYST; PHILLIP YALLOWITZ, DEPUTY REGIONAL COMPLIANCE OFFICER, LOS ANGELES, WARREN McFARLAND, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. TAYLOR. I am delighted to be here, Mr. Chairman.

Mr. ANDERSON. As a matter of fact, you might have almost been born in my district. I don't know.

Mr. TAYLOR. It is pretty close. I have a daughter who lives very close to your district who has just made me a grandfather. I am getting my first look at my grandchild.

Mr. ANDERSON. And what you want me to say, is that you just don't look old enough. Right.

Mr. TAYLOR. That's right.

Mr. ANDERSON. We would like to have you introduce your colleagues for the record.

[Pause.]

Mr. TAYLOR. For the record, Mr. Chairman, let me say that we are delighted to be here. It is always a pleasure to testify before your committee. I have with me at the table this morning on my far left Mr. Richard P. Raugi. He is a transportation industry analyst with the Commission. He is now stationed here in San Ysidro. There was a time when the ICC didn't even have anybody in San Diego. Having become Chairman of the ICC, I felt this was an extremely important matter, as you well know, since we have discussed it many times between the two of us. We are delighted to have Mr. Raugi here, and he has developed, I think, an essential amount of information for us, so that we are better able to understand and cope with the problem.

Sitting next to Mr. Raugi is Mr. Phillip Yallowitz, who is the deputy regional compliance officer, and he is located in Los Angeles. He, too, has been very careful in studying this problem and trying to develop some ideas and solutions for us.

On my immediate left is Mr. Warren McFarland, who is in our Washington office and who is the director of our Office of Compliance and Consumer Assistance and in charge of all of our enforcement programs and efforts.

Members of the committee as well as the chairman, let me say again that we are very pleased to be here today to present what I must characterize as my individual views on Mexican trucking operations in the United States and related issues. I emphasize individual views because I would like to point out for the record that this testimony has not been cleared or approved by my colleagues.

This hearing you have scheduled is extremely timely in view of the seriousness of the situation, particularly with regard to unauthorized operations which appear to be far more extensive in the State of California than in the other States along the Mexican border.

The primary concern in this regard is, of course, to insure safe operations to protect U.S. citizens and shippers who are affected by

accidents involving Mexican carriers. I will also discuss the almost total lack of access to Mexico for United States carriers. Ultimately, this situation affects not only our carriers, but also shippers and consumers in both Mexico and the United States who bear the costs of inefficiencies created by unduly restrictive international motor carrier entry policies.

In addition to my full statement, appendixes are included which provide additional data on Mexican motor carriers, cross-border traffic, and the cost of policing border points.

In defining the problem, there are three areas that really ought to be addressed. One area of concern is the issue of reciprocity. Mexican carriers are able to enter various segments of the United States market with relative ease, whereas United States carriers are effectively barred from offering similar competitive services in Mexico. While licensed Mexican carriers are few in number, there are substantial opportunities for Mexican carriers to engage in exempt operations. Such operations are not affected by the recent moratorium included in the Bus Regulatory Reform Act of 1982 which is discussed in my full statement. A second area of concern is unauthorized Mexican operations. This presents an economic threat to our trucking industry as you have heard already this morning, but more importantly, it poses a safety hazard which is the third area of concern: safety and insurance.

Now, before examining these issues, I would like to provide a little brief background. With the passage of the Motor Carrier Act of 1980, the United States adopted an economic regulatory policy significantly less stringent than that of Canada or Mexico. The differences in entry policy created an imbalance in the competitive opportunities available to United States, Canadian, and Mexican motor carriers to transport international traffic. Mexican and Canadian motor carriers were able to enter the United States market with relative freedom. The important thing is they could offer a single-line rather than joint-line service, thus potentially diverting the U.S. portion of international traffic from U.S. carriers. It is that, I might point out, single-line activities that shippers prefer, and that's the advantage of being able to go straight across and not having to interline with somebody.

Because of restrictive entry policies in Mexico and Canada, however, United States motor carriers were not able to offer similar competitive services. The heightened competition in the United States market along with the recession made our trucking industry particularly sensitive to this potential diversion of international traffic and led to the bus bill provision imposing a 2-year moratorium on the issuance of certificates or permits to carriers domiciled in Mexico or Canada or owned or controlled by Mexicans or Canadians.

Following imposition of the moratorium, the ICC required all applicants for operating authority to attest that they were not owned or controlled by persons domiciled in a contiguous foreign country. The moratorium was subsequently lifted by President Reagan insofar as Canada is concerned, but the ban remains in effect for Mexican motor carriers.

Now, as to reciprocity, the point there is there is no reciprocity in Mexico for United States carriers. Mexican law prohibits for-

eign-owned commercial vehicles from operating within Mexico except for a 20-kilometer border zone authorized by the Luis Cortines decree of 1955. In actuality, the only significant operations permitted within the zone are in the Nuevo Laredo area. There U.S. tractors, trailers, and drivers are permitted to proceed to customs clearing areas and "maquiladoras" located within 20 kilometers of the borders. At the other border crosspoints, U.S. carriers are virtually barred from operating in the border zone by local rules and practices. Only in very unusual circumstances or on an emergency basis—which I can ask Mr. McFarland to elaborate on if there is some concern about what's meant by emergency basis—have United States carriers ever been permitted to operate beyond the border zone into the interior of Mexico.

By contrast, there are substantial opportunities for Mexican carriers to conduct lawful operations in the United States. There are approximately 12 Mexican motor carriers currently holding permanent authority from the ICC. All of these authorities were issued prior to the moratorium. Of the 12 carriers, 3 hold authority to transport property, and the remainder are passenger carriers.

While there is no way for the Commission to readily determine the volume of freight or revenues generated by these carriers from United States traffic, considering their number and the limited scope of their operating authority, it is unlikely that the licensed Mexican carriers are lawfully handling a significant volume of regulated United States freight.

Mexican carriers can also operate legally in the United States without authority from the ICC under the exemptions contained in the act. There are essentially three major classes of exempt operations, and I would like to just briefly mention them: first, the transportation of exempt, which is primarily agricultural, commodities; second, private carriage; and third, commercial zone or terminal area operations.

Now, as to unauthorized operations, it's difficult to determine the extent of unauthorized operations by Mexican carriers in the United States or the volume of traffic that they actually divert from United States carriers. As I mentioned earlier, the problem appears to be more pervasive in the California area than in the other border States of Texas, New Mexico, or Arizona. It is my understanding that several California trucking groups alleged last year that there were approximately 300 Mexican carriers operating illegally within the California border area.

Recent ICC compliance efforts have been directed toward vehicle checks of Mexican carriers crossing the border. These checks disclosed 117 instances of suspected unlawful operations out of 2,482 vehicles checked during an 8-month period. While this amounts to only 5 percent, the figures are far from conclusive since they do not include unauthorized operations between U.S. points north of the border area, and it is extremely difficult to determine the validity of an alleged private carrier movement. Once Mr. Raugi found himself here on the border, we heard an awful lot about private carriage that we hadn't heard before.

In fact, ICC investigators believe that a sizable number of these alleged private carrier movements constitute unauthorized operations.

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An issue related to the problem of unauthorized operations is the matter of safety and insurance. The primary concern in this regard is to protect United States citizens in general and shippers in particular who are affected by accidents involving Mexican carriers. This, I might add, is my chief concern and the area that I feel must be addressed.

It is difficult to determine the extent to which Mexican carriers are in violation of United States insurance and safety requirements. This is because of the difficulty involved in identifying the carriers and monitoring their compliance. Those Mexican carriers that are licensed by the ICC are generally not considered to be a problem since they are subject to the ICC's insurance requirements and their safety records appear to be generally comparable to United States carriers. Nor are Mexican carriers operating under the agricultural commodities exemption a serious concern, and the reason for that is that the agricultural haulers ordinarily only serve the produce brokers located within 5 miles of the border.

There is a major problem, however, with regard to the safety fitness of Mexican carriers operating under the commercial zone exemption, in view of the fact that such operations are subject only to hours of service and accident reporting requirements.

This area has recently been addressed by the Surface Transportation Assistance Act of 1982 which imposes requirements that most Canadian and Mexican for-hire carriers and private carriers transporting hazardous materials carry proof of insurance in each vehicle. These requirements were implemented by the Federal Highway Administration's Bureau of Motor Carrier Safety in regulations published on February 7, 1983.

The new requirements—which I must say, Mr. Chairman, you were instrumental in enacting and getting on the books—are a major and important step in assuring that Mexican carriers have insurance coverage. Unfortunately, however, some problems remain. Many Mexican carriers entering the United States are either engaged in private carriage of nonhazardous materials or they operate vehicles with gross weight ratings under 10,000 pounds. In these instances, the operations are not covered by the new financial responsibility requirements. Many of the vehicles checked for insurance compliance during the joint ICC-DOT-Customs survey last April, for example, were not required to meet the new insurance requirements, although 101 were denied entry to the United States for failure to comply. I might say that survey included a series of motor carrier checks at San Ysidro and also at Colexico, Calif., and Ogales, Ariz.

Now, as to some available options including a couple of legislative possibilities, let me say that on the question of reciprocity, the objective is to achieve equivalent competitive opportunities for United States and Mexican carriers. It may be that with the fuel situation and so on that it is an ideal that can't be totally achieved, but in any event that's the goal. While the optimal solution would be to open up the Mexican market to United States carriers, the efforts by our Government to accomplish this end over the past few years have really not been successful. The last series of meetings between United States and Mexican officials took place in Wash-

ington in mid-summer of 1982 before the imposition of the moratorium.

While it is unlikely that bilateral negotiations will succeed in gaining reciprocal access for United States long-haul carriers into the interior of Mexico—and I might say that I am not certain that there are that many American carriers that really want to get into the interior of Mexico anyway—there have been some potentially positive developments for short-haul, cross-border trucking. The United States delegation to the Transportation Working Group of the United States-Mexico Joint Commission on Commerce and Trade is attempting to schedule right now a meeting before the end of this year.

One of the major United States objectives will be, of course, to obtain a Mexican commitment for implementation of the 1955 Luis Cortines Decree which would enable United States carriers to operate at least in the Mexican border zone. Since few United States carriers have expressed a real genuine interest in operating in the Mexican interior, I feel that implementation of the Luis Cortines Decree would provide the access to Mexican markets which United States carriers generally seek.

The options which are available to the United States to correct the present imbalance I believe include the following:

First, under its present authority, the Commission could—and I underline could—in various ways reexamine the availability of the commercial zone exemption to Mexican carriers along the United States-Mexican border.

For example, the Commission could consider assertion of jurisdiction over commercial zone operations along the Mexican border. If an adequate record were developed to justify an exercise of jurisdiction over such operations by the Commission, then carriers would have to apply for authority under regular application procedures. Mexican carriers would not be able to obtain the authority, of course, if the moratorium were still in effect.

Second, another possibility which could be considered in an appropriate rulemaking proceeding is the possible redefinition of the commercial zones along the United States-Mexican border in order to exclude points in Mexico and thereby preclude Mexican carriers from operating under the exemption on cross-border movements. If they happened to get across, it wouldn't have anything to do with what went on up here, but at least they couldn't come to the border and say that in effect they were operating within a commercial zone if it no longer existed on the Mexican side.

Under the present statutes, the Commission has the legal authority to assert jurisdiction in whole or in part over commercial zone operations. However, all of the approaches present difficult questions of law and fact.

There are also——

Mr. ANDERSON. Mr. Chairman, could I interrupt you for just a moment? We have a young fellow that just came in, who must have lost his way. This is the chairman of our full Public Works and Transportation Committee. You notice that everybody is standing up for him. [Laughter.]

Jim Howard, the Congressman from New Jersey and chairman of our full Public Works and Transportation Committee, Jim, I sup-

pose the reason you are here is because the golf course is a bit too wet?

The CHAIRMAN. No; believe it or not, they are open. No; I just want to thank you. I hate to interrupt you, Mr. Chairman, and members of the committee.

Mr. Taylor, we work together, and I had hoped that I would get a chance to be here for part, but I just want to congratulate the committee and the staff for conducting these hearings and thank the people who have come here. I am sorry to interrupt this way.

Mr. ANDERSON. Jim, thanks for being here. I did want to alert you that the Chairman of the ICC was here.

Mr. HUNTER. Chairman Howard, we are delighted to have you with us.

Mr. ANDERSON. We are on page 12 about midpage.

Mr. TAYLOR. Right.

The third alternative: There are also various specific legislative actions which could be taken to limit or deny access to United States markets by Mexican carriers. Existing operating authority of Mexican carriers could be revoked although as mentioned earlier, the operating authority presently held by Mexican carriers is really quite limited in nature.

The duration of the moratorium could be extended. If the moratorium expires, Mexican carriers could obtain broad operating authority under the eased entry provisions of the Motor Carrier Act of 1980. While an extension of the moratorium would not alleviate any of the current inequities, it would prevent Mexican carriers from making additional inroads into United States markets.

Mexican carriers could be prohibited from engaging in private carriage, hauling exempt commodities, and/or operating under the commercial zone/terminal area exemptions.

It should be recognized that removal of one or more of these exemptions would be a drastic measure—and I underline the word "drastic"—which would to varying degrees limit Mexican carrier access to United States markets. Also, for every Mexican carrier handling a shipment into the United States, there presumably is a United States shipper or consignee, and in some instances, a United States carrier that is responsible for or benefits from the current arrangement. There is also the more general overriding issue of whether these possible restrictive measures conflict with other United States policies including this Nation's relationship with Mexico. Accordingly, before any action of this nature is taken, it seems to me it would be essential to obtain and carefully analyze the views of shippers, local communities, truckers, and pertinent U.S. agencies.

I'll discuss the remedies for correcting the problem of unauthorized operations and safety and insurance together, since some of the options apply to both.

One suggested means to contain the problem of unauthorized operations as well as satisfy safety and insurance concerns, would be to limit the scope of operations that Mexican carriers are allowed to perform in the United States. Those in favor of this approach believe that a ban on Mexican carriers crossing the border could be simply and effectively enforced by customs officials. On the other hand, such a policy would conflict with other policy goals.

Another alternative would be to develop a program by which border crossing officials could easily determine through the use of a windshield sticker the status of Mexican freight entering the United States. I must say at this point that I have the same problems with the sticker as one of the earlier witnesses pointed out—the possibilities of counterfeiting and deception I think are abundant, so whether or not that would work, I don't know, but we would be happy to discuss that when the questions come.

Because of the nature of the various exemption provisions, however, it is virtually impossible to determine the status of freight movements at the border without causing substantial delays at the commercial crossing. Therefore, to be effective, any type of sticker or identification system would certainly require in our view the full cooperation of Mexican officials.

Another option would be to increase our enforcement efforts which would require additional personnel. Due to resource constraints, we cannot hope to cover all crossing points at all times. That just simply isn't in the cards. However, unannounced and intensive checks at border crossing points conducted on a periodic basis by joint ICC–DOT investigatory teams would at least provide an effective and highly visible means of enforcing U.S. law. Mexico currently utilizes a second checkpoint which is located a short distance from the border. We could adopt such a system thereby reducing such potential delays at the border due to compliance inquiries. For safety and insurance purposes, Customs officials could also be trained to enforce proof of financial responsibility requirements.

Additional options and legislative alternatives for the safety and insurance area would be to extend the coverage of safety regulations and insurance requirements. A major problem of enforcing compliance with Federal safety laws at the border is the ability of Mexican carriers to claim that they are operating under the commercial zone exemption. This exception to the general safety requirements could be removed through legislation. Mexican carriers engaged in private carriage of nonhazardous material or operating small vehicles could be required to meet some level of financial responsibility even though corresponding United States carriers do not have this requirement. This would insure that all Mexican carriers have some level of insurance coverage, and such a requirement would improve enforcement of the current law.

There is a bill currently pending in the Senate, S. 1108, the Highway Safety Act of 1983, which could aid significantly in enforcement efforts. The proposed legislation contains a provision which would require annual safety equipment inspections for all commercial vehicles weighing 10,000 pounds or more. As the bill moves through the legislative process, the inspection provision could be clarified to insure that it includes commercial motor vehicles from contiguous countries which are operating in the United States.

S. 1108 was ordered reported by the Senate Committee on Commerce, Science, and Transportation on September 21, 1983. As you know, a companion measure, H.R. 2693, is being considered by the House Public Works and Transportation Committee.

In conclusion, let me say that of the options previously discussed, closing the U.S. market is seen by some as the easiest solution for all three aspects of the problem—reciprocity, unauthorized operations, and safety and insurance. However, from other standpoints, this is the least desirable course of action and the one most likely to result in a significant deterioration in United States-Mexican relations.

There appears to be little hope at this point in time for successful bilateral negotiations, but I certainly believe the effort must be continued. Of the remaining available actions, asserting jurisdiction over commercial zone operations or redefining the commercial zone to exclude points in Mexico seem to offer possibilities. As discussed earlier, however, these options are not without drawbacks. Any further action in this area should be taken in conjunction with increased enforcement. I do not believe that any plan which is ultimately adopted can succeed without additional resources to police unauthorized Mexican operations.

This concludes my statement, Mr. Chairman, and now if you or any members of the committee have questions, we will see what we can do about trying to field them.

Mr. ANDERSON. Thank you, Mr. Taylor, for your presentation.

In your testimony, you stated that any further action on the Mexican carrier situation should be taken in conjunction with increased enforcement.

A few moments before you came in, I believe it was Mr. Bob Curry representing the truckers who stated that since deregulation there has been no enforcement by the ICC, so apparently we all recognize it as a problem.

Are your present staffing levels sufficient for this purpose? I notice in your remarks you did say that you didn't have the help that you are going to need.

Could you comment a little on what you are talking about as far as additional staff?

Mr. TAYLOR. Enforcement is a real problem for the Commission, Mr. Chairman, as you well know. This morning, I was speaking to the ABA bus group at the Coronado Hotel, and of course, they, too, are concerned about it. Everywhere we go, we hear about the Commission's lack of an effective enforcement program.

I must say that I have tried every way I can. I have brought Mr. McFarland on board from our San Francisco regional office for the specific purpose of trying to put together an effective enforcement program because as far as I am concerned, if you don't have an adequate enforcement effort, we are engaged in regulation for regulation's sake, which is obviously a sham and a bad proposition.

We do have limited resources. I'm not going to get into numbers or a discussion about various postures with respect to it, but, frankly, we are having a small battle right now. I'll be in front of OMB as soon as I get back to Washington over our enforcement numbers for fiscal year 1985.

I think we have probably just barely enough people at the present time to carry on a minimal enforcement effort. To relate that here to the problem along the Mexican border—and the problem is essentially one here in California and the biggest problem in

California is here at San Ysidro—to really do an around-the-clock job, it would take an awful lot more than just Mr. Raugi.

I am delighted he is here, so at least we have got a feel for the magnitude of the problem, and he does get assistance when he needs it out of our Los Angeles office. That's why I brought Mr. Yallowitz along because one of the problems we have been concerned with is what happens to these trailers that are spotted in San Ysidro? Where do they go? And there is no way to find that out unless you follow them, and that takes a lot of people.

In any event, our enforcement operation is not all that I would like it to be. I'm trying to make it as effective as we can with the limited resources available, and at the same time trying to resist the additional efforts that are being made to cut back on those resources to the point where if we are not successful as far as fiscal year 1985 is concerned, I think we may have some serious problems.

Mr. ANDERSON. You might like to know that we are sending a joint letter signed by Chairman Howard and myself to Mr. Stockman urging that before they start your budget, they take a good look at it in light of what your enforcement needs are going to be.

Now, in here you say that another option would be to increase our enforcement office which would require additional personnel. That's what you are talking about.

A few moments ago, we had one of the people saying that there should be better coordination between, I suppose, Customs, border patrol, and everybody else. It is difficult for me to see how we are ever going to have a person at the border checking—a Customs person let's say—who is going to know all the ICC regulations and rules, and who is also going to know all these other things he or she would have to know. I think the ICC is going to have to have someone there who is checking just for their own purposes, and I think each of these others will have to do the same.

Now, there should be some coordination between them, so that they don't work in a total vacuum, and I hope you aren't, but could you comment a little on that? Am I right? We couldn't have every border person trained to be an ICC expert could we?

Mr. TAYLOR. You are absolutely correct, Mr. Chairman. That's something we can't ask the Customs people to do. They have a job of their own to perform. As you know, they are looking for all kinds of other things other than trying to examine people on their ICC authority, and that's something we can't expect them to do.

Insofar as checking to see if there is evidence of insurance in the cab, something that is very routine and administerial, I suppose that could be done. I must add as far as the Customs people are concerned, they have indicated that they would like to be cooperative with us in every way they can.

If you would indulge me, Mr. Chairman, the opportunity to let Mr. McFarland comment on this specifically, I think he may have some comments in addition to my prepared remarks to fill in some of the chinks in the enforcement area and what specifically they have done and how those cooperative efforts have worked out.

Mr. ANDERSON. Before he does that, let me ask one more question——

Mr. TAYLOR. All right.

Mr. ANDERSON [continuing]. Which I think ties into this. My next question to you would be with regard to enforcement efforts. Unannounced checks at border points are one means of enforcing U.S. laws. Do you believe that such checks are sufficient, or would it be preferable to cover all crossing points on a regular basis? I assume you are going to cover part of that in your answer.

Mr. TAYLOR. Well, I think I can broad-brush that one at least at the outset, and then let Warren fill in again some of the detail.

Obviously, the finer sieve you have, the better protection you have got. If you can cover each border point around the clock with the resources and the people available to do that, then I am sure that would probably be a more effective program.

I don't think, frankly, that we are going to get that kind of an opportunity. I don't think that we are going to have those kinds of resources made available to us. We are very thin now, so I think we are really from a practical matter confronted with trying to do it on a sporadic basis making some example situations, and I think if it is done properly, it can be effective. But let me, if I might, turn it over to Mr. McFarland at this point to give you some details.

Mr. MCFARLAND. Thank you. With respect to the matter that the chairman was just speaking about, I think at the major crossing points it would be helpful to have somebody there on a full-time basis, but at the smaller crossing points, the periodic random checks would work.

Ever since we have established the position here at San Ysidro, initially we began to try to gather information and attempt to develop the scope of the problem. While the statistics that we gathered are really very rough and they only apply to the San Ysidro crossing, I think they might be interesting.

The chairman has already alluded to approximately 5 percent of them as being unauthorized transportation. Roughly a third of them then are exempt commodities, and about 40 percent are claiming to be operating in the commercial zone, and the balance is claiming to be private carriage.

I think it is worthy of note that from the time that Mr. Raugi first began asking about commercial zone operation, we had very few drivers claiming to be operating in the commercial zone, and now they nearly all claim to be operating in the commercial zone, so they were fast learners.

The basic problem with having someone at the border and trying to make that verification at that time is the amount of time involved. You can't look at a single piece of paper and make a judgment, so that almost automatically requires that there be a holding pen away from the actual border crossing.

You will see when we go to the gate this afternoon that the room there is very limited, very small, and you can't have a backup of vehicles making these kinds of evaluations. It takes a lot of time to make those determinations.

Mr. HUNTER. Mr. Chairman, could I follow up on that——

Mr. ANDERSON. Go ahead.

Mr. HUNTER [continuing]. With a question or two?

I think what you are telling us then is that as long as the Mexican carrier can tell us at the border, "I'm going into the free zone," and it is obviously completely subjective; he can tell you whatever

he wants; he can be going on up to Chicago, and once he gets through the border zone, it is going to be much less cost effective to try to apprehend that gentleman with the California Highway Patrol or the other agencies that would in fact apprehend him since he doesn't have the ICC operating license than it would be to stop him at the border.

I think my question is that here we have a natural control point which is the border. It's got to be a lot cheaper to stop somebody at the border than to have—than to bear the cost of running this guy down on the Nation's highway once he gets through, and yet you tell us that you can't have or you don't have the personnel that is necessary to check these people coming in at the border, and that is something that is difficult to accept because we obviously make every person who comes into this country from a foreign country—we check their visas. We don't have a spot check or a random check of visas.

My question is, How many people would it take for your operation to have somebody at the border and check people on a continual 24-hour basis?

Mr. TAYLOR. Could we both answer that?

Mr. HUNTER. I mean is that impossible is what I'm saying.

Mr. TAYLOR. No, it's not impossible.

Mr. HUNTER. It doesn't sound like it is going to take an army of 100,000 people to do that.

Mr. TAYLOR. No.

Mr. HUNTER. At least more than one person, I agree. [Laughter.]

Mr. TAYLOR. Could we both answer that one as well?

Mr. HUNTER. Certainly.

Mr. TAYLOR. One of the problems when they come across has been spotting these trailers all over San Ysidro. In the beginning, we found, in fact, Mr. Raugi speaks beautiful Spanish. I have to tell you a little funny story about that. We searched the Commission for somebody who was fluent in Spanish, and we found him in Cleveland, Ohio, of all places. [Laughter.]

Mr. TAYLOR. And that's where he came from to San Ysidro, so he made the rounds of the border. As a matter of fact, I came down here one day, and I did it with him, and we took a look at what's going through on the dock, and he asked these people in Spanish where they are going and what they are doing.

For the first 10 days, presumably beore they really knew who he was or why he was here, we continued to get the same answers. Some of them were going to Portland, Oreg., and Seattle and all over the country.

Well, after about 10 days of that, they were all going to the commercial zone.

Mr. MCFARLAND. They didn't know where it was, but they were going.

Mr. TAYLOR. So that has been the answer to that, and one of the things that happens is they bring trailers across, say they are going to the commercial zones, spot them in San Ysidro, and then they are picked up, and they may sit around. You heard this morning about all the trailers with hazardous materials in them, and they sit here. I went around and saw a lot of them. They are stashed behind markets. They are all over town. I didn't count them, but

there are a number of them here, and you will have an opportunity to see them if you want to wander around and do so.

I have a feeling that a lot of those are picked up by either unlawful Mexican carriers that are already on this side of the border, or they can go back across after something has been spotted and then bobtail over through the gate. They don't have to go through the pen with no trailer on them at all, filled, with their cheaper Mexican fuel, go pick them up at 3 in the morning, and as you say take them to Chicago or anyplace.

Mr. ANDERSON. By bob-tailed, they are not checked at all.

Mr. TAYLOR. Bob-tail is just come through the regular gate like an automobile.

Mr. HUNTER. We need to look at that also, don't we?

Mr. TAYLOR. Absolutely, you do. We are thoroughly convinced that it is not just a matter of who hauls this over the border and then goes on to wherever. We are thoroughly satisfied that right now the commercial zone is being used as just a storage to spot trailers which are later picked up and taken who knows where. And the only way we have of finding that out is to have enforcement personnel actually follow them.

Now, Mr. Yallowitz detailed some people down here to do that from Los Angeles, and I know he and Mr. McFarland both would like to give you some more details if we might, especially on your last suggestion on the costs, because we have developed some possible numbers on a proposed scenario.

Mr. HUNTER. OK. If you could give us that, I think we would really appreciate that, and if we had—if we eliminated this commercial zone exemption, i.e., required everybody to have an ICC operating permit, what would it cost you to have a guy physically there at each crossing point checking those ICC operating permits as they came across?

Mr. MCFARLAND. These figures are an appendix to the Chairman's statement—his full statement.

Mr. HUNTER. Oh, fine.

Mr. MCFARLAND. So they are a part of it, but if you want them for the record right now, we calculated those figures on 1 additional staff member at each border crossing point for a total of 22. Then we figured that we would have to have some relief there because of sickness and whatnot if we were going to make it 100-percent coverage, and then a couple of attorneys to handle the cases, and those are the figures there without going into all the details.

Mr. TAYLOR. Well, specifically, if we had 22 investigators, 2 relief investigators, and 2 attorneys, we have estimated the cost at $1,317,600, and that——

Mr. HUNTER. You wouldn't need more than one person to check these things?

Mr. TAYLOR. I don't think so.

Mr. MCFARLAND. If we had six investigators at major points and two relief investigators and one attorney—another option—we have estimated the cost at $457,200.

Mr. TAYLOR. We are not saying that we would need more than one person. That would be predicated on having a place where you could pull them away from the actual gate and take the time to look at them.

Mr. HUNTER. Who checks on the ICC operating permits now?

Mr. MCFARLAND. No one.

Mr. HUNTER. It is definitely a spot basis?

Mr. MCFARLAND. A spot basis, yes.

Mr. HUNTER. But the customs people do not do it, so——

Mr. MCFARLAND. They are not qualified to do it, nor do they have the time to do it.

Mr. HUNTER. OK, so theoretically these people could even be saying, "I'm going to Portland, Oreg.," and they would drive through and they would go if they want to.

Mr. MCFARLAND. Yes, that's possible. It doesn't happen that frequently, but it can happen.

Mr. HUNTER. Thank you.

Mr. TAYLOR. You might be interested in a little elaboration, too, on this second point north of the border because that is an opportunity, too, to do a much more detailed examination than you can at the border without delaying things. That is, in effect what the Mexicans do themselves, so we could have another facility down the highway.

Now, of course, the problem with that is once you are across the border, you don't have to get on the freeway and proceed north. You can go the back roads, and it has got to be very close to the border if it is going to work.

Mr. HUNTER. You are saying that basically for $1.3 million with a requirement that you still need the ICC permit even if you are going to go into the so-called commercial zone, you would basically clean up a great deal of the problem. You would still have people slipping through and counterfeiting their—theoretically, you can counterfeit your ICC operating permit also as well as the sticker.

Mr. TAYLOR. Right.

Mr. HUNTER. But you are going to eliminate a great deal of the problem if you did that.

Mr. MCFARLAND. Yes, sir. No enforcement program is going to be failsafe, and I listened with interest this morning to the attempts that will be made to get around it, and they will continue, and we won't catch everybody. The police department can't do that, so we can't perform miracles, but certainly it could be more effective, I think, if we had some more people.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. ANDERSON. According to data included in appendix C attached to your statement, the San Ysidro border crossing jumped from the No. 4 truck crossing point in the country in 1981 to No. 1 in 1982.

Do you know why this happened?

Mr. MCFARLAND. No, sir, I don't. Those figures were given to us by the Customs people, and I don't know that I know why.

Mr. ANDERSON. It seems like a big jump.

Mr. MCFARLAND. Yes. They may be able to explain it.

Mr. ANDERSON. OK, then I'll hold that.

Are there commercial zones at each border crossing?

Mr. MCFARLAND. Yes, sir.

Mr. ANDERSON. And how large generally are these zones? For example, at the Calexico crossing, does it encompass all of Imperial County?

Mr. MCFARLAND. No, it is based upon the population of the city at the border crossing.

Mr. Yallowitz has just reminded me that this is maybe not unique, but it is unusual in that San Ysidro is part of the city of San Diego so that San Ysidro automatically has the commercial zone of San Diego which is 20 miles based upon the population of San Diego. Whereas Calexico—and I don't know the population of Calexico—but the commercial zone there would probably be 2 or 5 miles from the municipal limits of Calexico, so it is based upon population factors. There are some defined commercial zones, but I don't know that any border commercial zones are defined on the Mexican side. I think that——

Mr. ANDERSON. Now, is it the same policy all along the Mexican border in Arizona and New Mexico, and so on?

Mr. MCFARLAND. That's right. Yes, sir.

Mr. ANDERSON. I understand that Nuevo Laredo is the only place where they do allow us to go over on their side?

Mr. MCFARLAND. The only one that we know of, yes, sir.

Mr. TAYLOR. Actually, the commercial zone, Mr. Chairman, here it goes up to Carlsbad, so it includes all of San Diego. It is enormous. When they say they are coming into the commercial zone, they can spot trailers in an enormous area. It doesn't have to just be in San Ysidro. They have got all of San Diego and way north of San Diego because of the fact that San Diego actually gets down this far and includes San Ysidro. So, they have got quite an area in that commercial zone on our side, and, of course, we have nothing on their side thanks to their failure to recognize the Cortines decrees.

Mr. ANDERSON. Now, in looking at the commercial zone exemption, could you elaborate on what is meant by "under common control management or arrangement for a continuous common carriage unless outside the commercial zone exemption"? I think you referred to this in your statement. Could you clarify that a little bit?

Mr. MCFARLAND. All right. If the movement is under common control, in other words, one carrier moving it from a point beyond the commercial zone into the commercial zone, it does not have that exemption. But the movement within the commercial zone that is exempt. And the commercial zone by definition extends across the border into Mexico, so that you can visualize a circle with half of it on either side, then movement within that commercial is zone exempt.

That's not a full and complete explanation, but that's a rough-and-ready explanation.

Mr. ANDERSON. I have a number of other questions, but I am going to hold them for a few minutes and let our other fellows ask some questions.

Mr. Howard, do you have some questions?

The CHAIRMAN. No, I haven't at this time, Mr. Chairman. I am certainly very happy to be here. I want to congratulate you for holding these hearings on this important question that we have been struggling with for quite some time. We are concerned not only with Mexico but with Canada in relation to the motor truck industry and the bus industry. We are concerned about fairness in

our full committee such as with the problem that our international air carriers are having with European and other nations as to the fact that we do not have reciprocal treatment.

We just want to be fair, and we want to be treated in a fair way, and it is going to take some digging and studying.

Certainly, Mr. Chairman, with your record for conducting thorough hearings and being forceful and fair, I'm sure that we will do well following these hearings.

I also wish to thank Congressman Hunter. He is not a member of the full committee, but he has a vital interest here in his district which joins Mexico on the north.

Mr. HUNTER. Well, thank you.

The CHAIRMAN. Thank you for being here, and also thanks to our colleague on the committee, Congressman Fofo Sunia from American Samoa whose district joins Mexico on the west, I believe. [Laughter.]

I want to thank you.

Mr. HUNTER. And New Jersey on the east.

Mr. ANDERSON. That's right, New Jersey on the east. [Laughter.]

The CHAIRMAN. I just want to congratulate you for having these hearings and coming down here once again, coming this far from Washington and taking time on a weekend to be able to come and meet with the people here where the interest is. I think it is a credit to you, Mr. Anderson, for arranging for these hearings and having our colleagues on the staff here.

Mr. ANDERSON. Thank you.

Before I recognize you Duncan, I have another question.

Mr. Taylor, you have indicated that the Commission could in various ways reexamine the availability of the commercial zone exemption along the United States-Mexican border. Do you consider it likely that the Commission will take such action? In answering that, you are aware that Duncan does have a bill that will for all intents and purposes eliminate the commercial zone, so would you want to comment on that before I recognize him to ask his questions?

Mr. TAYLOR. Well, let me say that I have seen his bill but only very, very quickly. I was handed it as we were getting ready to make this trip, and I haven't had a chance to really sit down and discuss it with even our people, let alone present it to my colleagues for their views. I don't know whether it has been introduced yet or now. I guess it's going to be, if it hasn't been, sometime soon.

Insofar as what the Commission itself might do with the commercial zone, there are problems involved in cross-border traffic that relate other than just to this regulatory-transportation issue insofar as trade back and forth. There are legal questions as to whether or not just chopping off—again, if you think about it as a circle with a line through the middle--cutting off the Mexican half of the circle and in effect aiming something directly at them.

I don't want to get involved in a discussion of those sorts of legal issues which presumably somebody will properly raise in due course if such action were taken and leave that to the courts to determine, but it is not a simple matter. I think that lots of people feel that, "Oh, well, all you have got to do is just say that there is

no more commercial zone on the Mexican side," and then they can't come up to the border as carriers who are operating within a commercial zone because there is no piece of the circle on their side of the border.

Of course, if they get across the border, what they could do illegally on our side is something else again, but presumably that might really seriously curtail the cross-border traffic.

I did indicate in my testimony, which I repeat again was my own individual presentation and my own individual views, that the Commission could do that. I think I must in all fairness say to you that as presently constituted at least, it is most unlikely that the Commission would do what you are suggesting, and perhaps I ought to leave it at that.

Mr. ANDERSON. Duncan.

Mr. HUNTER. Well, thank you, Mr. Chairman. I think your broad question did open the subject up fairly effectively.

Mr. ANDERSON. I did it so you could get in and pry it wide open.

Mr. HUNTER. Exactly.

I think that my first question is to follow up on this. Is there any way that we can control this illegal traffic, that is, the guy who comes across and says, "I'm going to San Ysidro," and then heads to Chicago?

As long as you have the exemption for ICC certification or ICC operating authority in this so-called commercial zone, is there any way we can control it if we don't do that?

Mr. TAYLOR. I think one of the most effective things we can do—and maybe this is getting at the real problem somewhat indirectly—is to have some appropriate safety and insurance requirements.

For example, if we had more complete and extensive insurance requirements than we do now—and we made a very, very good start with the chairman's proposal on evidence of insurance, at least as to some moves and for some carriers—if that were more complete, I think an awful lot of carriers would be kept out of the United States for simply not having adequate insurance.

I think safety could do the same thing.

Mr. HUNTER. You think everybody should be subject regardless of tonnage, et cetera, to insurance requirements and some rudimentary safety check.

Mr. TAYLOR. My feeling is that you are compromising people's lives, accidents on our side of the border—those are the kinds of things you shouldn't play with, and safety requirements can't be too extensive in my view. I think that's opening up another can of worms, I know, but I am a very safety-oriented person. It is largely beyond the domain of the ICC at the moment. It's more within the Department of Transportation. Secretary Dole has safety matters very high on her agenda, and I just think that is absolutely essential that it be as broad and as extensive as we can possibly make it.

I think if you did that, in and of itself, you would eliminate a lot of carriers coming into the United States. And in those kinds of checks, I think the mechanics could be worked out so a great deal of it could be done at the border.

Now, when you get to the unlawful operations, then it is a little more difficult to do, and the commercial zone does really aid and abet the opportunity at least for people to come across the border

and to spot trailers in the commercial zone and have them picked up and go on elsewhere.

Mr. HUNTER. Well, from all practical purposes from the testimony that we received, the Mexican Government or the Mexicans, whether through illegal means such as stopping Mr. LaSalle's trucks and forcing them to pay them $5,000——

Mr. TAYLOR. Yes.

Mr. HUNTER [continuing]. Essentially with no legal justification, but simply to get his trucks back a few miles from the border, they have effectively cut off their side of the zone already. They have——

Mr. TAYLOR. Except in Nuevo Laredo.

Mr. HUNTER. OK. They have testified that here at least and in the rest of the United States, except Nuevo Laredo, there is no commercial zone on their side of the border.

Mr. TAYLOR. That's right.

Mr. HUNTER. So what our trucks do is they go down, the Mexicans allow them to come across the border, and they drop their trucks off in the yard that is placed there for that purpose on the Mexican side of the border, and a Mexican trucker then picks their trailer up, and he moves it to wherever his destination is in Mexico.

Mr. TAYLOR. Yes.

Mr. HUNTER. Now, my question to you is why couldn't that same type of operation take place in our situation if we eliminated this commercial zone where you don't have to have an ICC operating permit, and we required the permit. Then the people without the permit could come across the border to a yard a quarter mile or a half a mile from the international border. They could drop off their trailers in the yard, and from my perspective, it is a lot better if you are going to drop off some chlorine gas to drop it off there and have it taken to its destination than to pull it up in San Ysidro in a back alley and stuff it, but they have apparently been doing it.

They could drop it off, and an American trucker could pick it up—pick up that trailer just like his Mexican counterpart does—and drive it up to San Jose or San Francisco or wherever it's going.

My question is why isn't that feasible?

Mr. TAYLOR. I think the heart of that issue is this basic matter again of reciprocity. Do we want to in effect respond to what they are doing to us, and if we do, there is no hope of ever changing that. I'm sure that's quite feasible.

I think in addition to the transportation aspect, however, which is important to consider, we also must think about what we do to cross-border traffic and trade. There is an enormous amount of that that goes on which is not just important to the Mexicans, but it is also very important to the United States, and I think those are issues in addition to the transportation consideration which should be taken into account.

Now, the other side of the coin on the reciprocity matter is that I would hope that perhaps some day we would get come improvement on the Mexican side and perhaps the Luis Cortines decree will be recognized. If that were to come about and they recognize on their side what we now recognize for them on our side, then I

think the remedy you are talking about might not be all that necessary.

The problem at the moment is, however, that it doesn't look like much progress has been made or perhaps will be made at any time soon to get the Luis Cortines decree to be adhered to.

As I understand it, at the meetings that were held previously, the Federal Government officials in Mexico were all perfectly willing to recognize the existence of the decree and the fact that it should be implemented, but then turned around and kind of copped out on the fact that, well, really this enforcement is provincial and it is at the local level, and we don't have all that much control over that. That's where the job really has to be done, I think, on the Mexican side.

While there are some encouraging signs that perhaps some more discussions and conversations will take place, I don't think I could in all fairness indicate to you that there is going to be a resolution of that problem any time soon.

Then we are back to the first issue: If they are going to treat us that way, then why don't we treat them that way up here? If that's the direction in which we are going, I think that assuming we don't get into a disruptive proposition with cross-border trade and traffic in terms of regulating and controlling the transportation movements, what you are suggesting, of course, ought to be effective.

Mr. ANDERSON. Would the gentleman yield?

Mr. HUNTER. Sure, certainly.

Mr. ANDERSON. Were you in the room earlier when Frank LaSalle was making his statement on this? He reported about a meeting that had been held with President Portillo, where President Portillo indicated that he was aware of the unfairness to us on this side, but that he didn't feel it was his responsibility to do anything. He felt it was the United States responsibility to do whatever it had to do.

Then there was a statement where it was quoted in the newspaper. It says, "Mexico restated their original position that full reciprocity in trucking is not open to discussion," in other words that they are not even going to discuss it, and another one of the Mexican officials made it clear that they would not lift their ban on U.S. truckers operating in Mexico even if it results in a prohibition against Mexican truckers operating in the United States. They have pretty well made up their minds that they are not going to move.

Mr. TAYLOR. I think I would have to agree with you, Mr. Chairman, that that's probably the case. I didn't hear the earlier testimony about the Portillo meeting. I have not personnally attended any of those meetings other than the one with the U.S. trade——

Mr. ANDERSON. I was going to ask that because I would have thought that you should have been told at least what went on in that meeting.

Mr. TAYLOR. I am going to again defer to Mr. McFarland because he has attended a couple of meetings where this discussion has come up, and by mentioning it in my testimony, I don't want to imply for a moment that it looks like there is going to be a resolution any time fast. Mexico has got an awful lot of other problems, and I don't think this is very high on their agenda. We got the defi-

nite impression that there isn't going to be any kind of a solution real fast.

The other thing that is important to remember is that I don't know of any United States carriers who really want to go down into the interior of Mexico for a whole lot of reasons that have nothing to do with regulation, and we needn't get into a lot of that.

I think the thing that they would like is the opportunity to take advantage of the commercial zone so they can go back and forth with this cross-border traffic, and they can single line—that's the important consideration—to cross the border. The Mexicans can do this now, which is an opportunity we don't now have.

Let me ask, again, Mr. McFarland to comment on a couple of meetings he attended and give you his impressions of what possibilities for success in any further negotiations we are going to have, because I don't think any of us hold out much hope for them.

Mr. MCFARLAND. I was the Commission representative to this transportation working group——

Mr. ANDERSON. Oh, yes? Are you aware of this meeting that——

Mr. MCFARLAND. Yes, sir. Well, I think he may have—I am not aware of the Portillo——

Mr. ANDERSON. He's right behind you, so don't say anything too fast.

Mr. MCFARLAND. All right. I'm not aware of a Portillo meeting, but in Laredo we met with about the No. 3 person in their ministry of transportation, communications and something else—I have forgotton now—and he made the statement much as you quoted Mr. La Salle making. I did not hear it come from Portillo, but I did hear it come from him.

Throughout this series of meetings that we have held with the Mexican counterparts on various border points, including last summer when we met at some length in Washington to attempt to negotiate it, their position was pretty much that—in the interior, not a chance, but the Luis Cortines 20-kilometer zone on their side they agreed to. But then when it really got down to the push, as the chairman said, they said, "Well, you know, really it is the local jurisdictions that would enforce that, and we can't direct them what to do."

I think it is a fair assumption to say that they are not interested or not even considering anything beyond that Luis Cortines 20-kilometer zone.

Mr. ANDERSON. What you are saying then is that instead of our attempting to work some sort of coordinated, cooperative negotiating position, when it comes right down to it, at the present time at least, there is no negotiation. There is no purpose of negotiating because there is going to be no give on the Mexican side, so what we apparently are talking about is not what we can work out together and what we can do. Since one side is closed, in a sense, we decide what we are going to do.

It seems like the decision out of these hearings is apparently going to be not where do we go on a two-way street. Since half of the street is blocked off, what do we then do that is right and fair and just for us to do for our people who are in the business?

In a sense, that's what you are saying because even though the higher-ups said, "Well, maybe we can do something here," but

where the decision is being made, they are saying, "No, we are just not going to."

Mr. MCFARLAND. Well, I would say that at the time that those statements were made, the Mexican economy was in much better shape than it is now. Since the economy declined on their side of the border, they have not been open to negotiation at all. They just have not met. But I did feel that there was a genuine commitment on their part to try to implement that Luis Cortines decree, and had the economy not declined, they may have come back from the Federal level and tried to do more with it than they actually did.

The CHAIRMAN. Didn't you say that the people you talked to really aren't the people who make the decision?

Mr. MCFARLAND. Well, that's true.

The CHAIRMAN. Yes. There is an awful lot of cooperation given—there are an awful lot of good answers given out of the people whose answers don't count.

Mr. TAYLOR. Could I just say to Chairman Howard's comments that I think you have pretty aptly summed it up, but I would only add to that the fact that perhaps it is a little bit like dealing with the Russians on many occasions. You do have to continue talking and trying to pursue those kinds of solutions.

The CHAIRMAN. But if they don't make some decision in fairness to us now, then like the Soviet Union, they will continue saying, "Yes, let's talk forever," as long as they are getting their way and we are not doing anything.

Mr. TAYLOR. That's what I was going to add. I think that if you begin——

The CHAIRMAN. We have to get some clout on our side.

Mr. TAYLOR. If you begin to take some action, it may in turn facilitate some meaningful negotiations, and as long as we do nothing and sit here and look out the window and we don't have any enforcement effort at all that's effective and just say a prayer for it, I think I would have to agree with you. There is no likelihood.

The CHAIRMAN. Yes; you can think about something happening and say, "If things get better, then maybe the people who were talking in an affirmative way might be able to get down to the other people who then might change their minds." It seems like that's not the way to go.

Mr. HUNTER. Mr. Chairman. We have a second dimension to this, too, that we can't lose sight of, and that's that this is not just a question of reciprocity, whether we cut their half of the circle off. What these gentlemen really have testified to is that essentially we have no way of enforcing our present law that you need to have an ICC operating permit if you are going to make that long run up to Chicago or Sacramento or wherever.

The reason we don't have that effectiveness is because these people can come across the border freely, which is our one control point, and say, "I'm just going to go up the road 10 miles," and then the guy can head off wherever he wants to.

Mr. TAYLOR. Or get one of his compadres to pick up the trailer he spots and head off.

Mr. HUNTER. I've got one question on that. Is there any way we could require some type of—let's say we went with a sticker system. I know it has been criticized, but let's say that we had

some type of a sticker system, and we said, "OK, if you are going to operate in this commercial 20-mile zone along the American border, then you can have a green sticker. If you have got an ICC operating permit, we will give you a red sticker, so you can be up in Chicago with a red sticker, but if you have a green sticker, don't let the CHP or anybody else catch you up in San Francisco or Sacramento or Nevada or wherever." Is that a possibility?

Mr. TAYLOR. Well, of course, you have got to go back to the fact that as far as any new Mexican authorities are concerned—and there are very few at the moment where they are actually lawful on our side of the border—we have got a moratorium in effect, and the Commission couldn't even grant any as long as that is in place.

Mr. HUNTER. No; but I'm saying the people who have stickers—there are people now who will already have received their ICC operating permit.

Mr. TAYLOR. Very few.

Mr. HUNTER. But those few people could come by, and they could receive—if they have received those permits——

Mr. TAYLOR. Yes.

Mr. HUNTER [continuing]. They could receive something that identifies that they can be caught further than 20 miles above the border.

Mr. TAYLOR. Yes.

Mr. HUNTER. But the effectiveness of it or the real thrust of the thing is that it would keep that guy who says that he is only going to San Ysidro and wants to go Chicago from being able to leave that border zone.

Is that something that is workable?

Mr. TAYLOR. The objective that you are trying to achieve is obviously the same one that we are interested in achieving because that's really the problem, getting them across the border and having them operate all over the place.

Mr. HUNTER. Do you have any ideas on that? Is there anything else we can do?

Mr. TAYLOR. Well, let me explore the sticker thing with you specifically since you brought that up and that was mentioned earlier this morning. Mr. McFarland has some comments about that. As a matter of fact, he did a two-page memorandum for me which we could make part of the record, by the way, if you like, as to some of the problems with it.

Mr. HUNTER. Oh, great.

Mr. TAYLOR. But, quickly, a comment now I think might be appropriate.

Mr. MCFARLAND. We recognize the problem of counterfeiting and things of that nature, plus there are so many exemptions—in other words, you not only have the commercial-zone exemption, you have the private-carrier exemption and the exempt-commodity exemption.

It might be better that you have a sticker that says "commercial-zone exemption" only and not have any other types of stickers, and then if you don't have the commercial-zone sticker, then you would be subject to being stopped and being examined, or if you were outside of the zone with that sticker on your vehicle, then you would be subject to being stopped and examined.

That's one way to approach it—a different way to approach it, I might say. But there are so many exemptions, if you try to make one sticker to do all of them, you wind up with a very complex system.

Mr. HUNTER. Would you recommend then that if we try to with some simple method of identification that will allow us to cost-effectively stop these people——

Mr. MCFARLAND. Yes.

Mr. HUNTER [continuing]. And control it, we probably are going to have to have some legislation that perhaps eliminates at least some of the exemptions and simplifies the system so that it is workable. Would you agree with that premise?

Mr. MCFARLAND. Yes, I would agree with that.

Mr. TAYLOR. I think if you are going to play the exemption-zone proposition—to go back to my answer to Chairman Anderson's question—it is probably going to take some legislation.

I think the sticker is far more effective for safety propositions than probably it is for unlawful operations.

The ideal way, you see, to do that would be to do it on the Mexican side. On the Canadian border, particularly in the eastern provinces, they are very concerned about unlawful operators getting into the United States, and Quebec will even unload a truck if it is headed into the United States without authority.

We can't expect that kind of cooperation from the Mexican officials on their side of the border insofar as this kind of a program goes, but that's where actually they should have to show to someone the fact that they have the authority to come into the United States and obtain an appropriate sticker——

Mr. HUNTER. That's not going to work.

Mr. TAYLOR [continuing]. But in Mexico that option isn't available to us.

Mr. HUNTER. So what do you think? I think we need to try something rather than simply throwing our hands up in the air and saying "Everything is tough and they can get around it. No matter what you do, they are going to make a run on you." So let's bemoan the problem, but we haven't come up with any answer.

Mr. TAYLOR. We do have to try something, and I just am suggesting for a moment that before we headlong rush into this as a panacea or that as a panacea, that this proceeding be used as a means of developing a lot of information here locally and that we take a look at it again with input from others who may have some concern because it does have an impact upon our cross-border trade and traffic.

I think we can come up with an appropriate solution. I think this committee is to be commended and you, in particular, for offering some specific suggestions. We all have got to think about it, and we have got to address it, and we ought to not just look out the window, but do something meaningful. If we do, maybe that will facilitate these negotiations again and some movement on their side.

Mr. HUNTER. One thing we can remember is that if it doesn't work, we can always change the law, too. I mean, we can try something——

Mr. TAYLOR. Right.

Mr. HUNTER [continuing]. And if it doesn't work, we can do something else.

Just one last question: If we eliminated the free zone where the Mexican trucker came to the yard, had to drop his trailer off and an American would take it on up to its destination, do we have—you mentioned that this may have some impact in the commercial trade—do we have the capability—the commercial trucking capability to make that work? In other words, do we have enough American truckers to be able to make those runs?

Mr. MCFARLAND. Yes, absolutely. I don't think there is any question about that. That's one of the complaints of deregulation that there is too much capacity and too little freight.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. SUNIA. Mr. Taylor, most of the Mexican carriers presently holding authority from the ICC are primarily passenger carriers.

Mr. TAYLOR. That's correct.

Mr. SUNIA. Have you had any recent applications from Mexican freight carriers, and would you expect a substantial number to be filed if the moratorium is permitted to expire in 1984?

Mr. TAYLOR. Of course, we haven't had any now as a result of the moratorium. I asked on the way down because I couldn't remember the exact number. It seems to me that we have five on hold, so to speak, as a result of the moratorium.

Frankly, I don't think if the moratorium were lifted that we would have many. We had an awful lot of Canadians who wanted to come in, and they flooded us with applications.

I am sure we would have some, and especially if some of this legislation were developed and made it really more important. But, once again, the problem has been that we don't have really adequate ICC enforcement on our side of the border, be it applied to Mexicans or other types of carriers.

I don't think there has been that much incentive for them to obtain authority up until now. However, if we had a more effective enforcement program on this side of the border and maybe if some of these other things were done, perhaps there would be inducement for them to obtain authority once the moratorium was lifted.

Again, that's just speculation on my part because I don't know if it would work or not. We have to do something about the enforcement problem, because it makes a farce of the moratorium. I mean, theoretically, the moratorium was designed so that for a period of time they were not to be able to have authority in this country because of reciprocity considerations. And when we allow them to operate illegally with no adequate enforcement, then we have made a sham out of the moratorium, so that's something that all of us at the ICC feel strongly about.

The CHAIRMAN. How can you do that better if they keep cutting your budget? [Laughter.]

Mr. ANDERSON. I told him about our letter.

Mr. TAYLOR. The answer to that is, Chairman Howard, we aren't, and we need some help. If we don't get some more people—and especially in terms of the kind of program that Congressman Hunter is talking about, we are going to have to have some more resources.

The CHAIRMAN. We talked about that. As you know, last year there was an attempt to cut the budget. You weren't able to do cer-

tain things. I have been to enough places with you in enough different areas to know you don't have the manpower to do the kinds of things that Congress wants to do. I would just like to get it into the record of this hearing that I believe—and I believe some others do—that much of the reason you are not able to do your job as you would like to do it or as might even be required to do it is because you don't have the manpower. Without changing anything else but with more manpower you could be doing it better than you are now.

Mr. TAYLOR. It would sure help. There is no question.

The CHAIRMAN. I don't want to belabor it, but I thought we would get it into this hearing as well.

Mr. ANDERSON. I just told him that you and I had sent a letter to Budget Chairman Stockman on the budget asking——

The CHAIRMAN. That's going to scare the hell out of him? [Laughter.]

Mr. ANDERSON. We hope so.

Mr. SUNIA. One final one, Mr. Chairman, as to Mr. Taylor's opinion on imposing an across-the-board entry requirement for foreign carriers operating in the United States—in other words, eliminating all exemptions that now apply.

Mr. TAYLOR. Including the agricultural exemption? That's not as much a problem from either the safety or insurance standpoint, as we have mentioned. There are an awful lot of agricultural products that move back and forth across the border. Most of it, we find, goes to brokers.

Yes, I think, that you can easily say that the way to solve this problem and just not have to concern yourself about it any more is to close the border and don't allow anything to come back and forth. But that to me is kind of like throwing the baby out with the bath because I think the problems that might emanate from that——

Mr. ANDERSON. Could you indicate what that might be because we keep hearing——

Mr. TAYLOR. Well, there are an awful lot of these what they call maquiladores operations on their side of the border, and to be sure, some of it involves American companies who send products across the border for some kind of assembly operation, not necessarily the final assembly operation. There is a certain amount of that border business that comes back up here to the United States. Mr. McFarland might want to talk to you about specific commodities and so on. There are people on our side of the border who are quite dependent on that. It is my understanding that Mexican economy, as bad off as it is now, to a large extent depends rather heavily on some of the maquiladores operations. If they were totally eliminated, maybe you would increase your——

Mr. ANDERSON. They wouldn't be eliminated, would they? They might cost a little more.

Mr. TAYLOR. That's the point, and you might not have as much of it. See, that's the problem, and it is way beyond the field for us at the ICC. But some of those things, it seems to me, ought to be looked at, because if you get too drastic in your remedy and it does begin to shutdown operations on the Mexican side of the border, I'm sure that we probably would see a corresponding increase in

unlawful immigration in the United States which is already a serious problem.

In any event, I think all those kinds of things have to be evaluated and considered.

Closing the border just completely and entirely, I think, is really a very drastic proposition.

Mr. HUNTER. That is essentially what the Mexicans have done to us.

Mr. TAYLOR. They have done that to us.

Mr. HUNTER. They have been able to solve all their economic problems. In other words, they haven't had the maquiladores problems by closing down that American supplier who would send the truckload of auto parts down to a certain company in Mexico.

Mr. TAYLOR. Yes.

Mr. HUNTER. They have been able to solve it easily. They simply off load to their own carrier, and their carrier makes the run.

Mr. TAYLOR. Yes.

Mr. HUNTER. Now, why is it so very difficult for us to do the same thing?

Mr. TAYLOR. It isn't, and I'm perfectly prepared to say that you could close the border and solve the problem if you really wanted to do that and simply not allow any Mexican carriers to come across.

Mr. HUNTER. But I am saying that——

Mr. TAYLOR. You have to put them in a pen somewhere, and they would have to be picked up then by, presumably, the authorized American carriers on our side.

The only point I'm trying to make on that is that before that is really finally decided upon with a solution, I think that other than just pure transportation-across-border considerations should be taken into account.

I'm not prepared at this juncture to address those considerations or even to evaluate them. The committee has the resources and the wherewithal to look into that, I think, with some degree of thoroughness and care, and I am simply suggesting that perhaps that ought to be done before any final judgments are made.

Mr. HUNTER. Surely.

Mr. ANDERSON. Fofo, I cut in on you there. You still had the floor when I broke into your questions.

Mr. SUNIA. No, that's all right.

Mr. ANDERSON. Did you finish?

Mr. SUNIA. I was just thinking that we all should try for equality. I think we could give ourselves equality quite easily.

Mr. ANDERSON. Any further questions?

Mr. HUNTER. I have no further questions.

Mr. SUNIA. No, Mr. Chairman.

Mr. ANDERSON. Well, thank you, Reese, for your excellent presentation.

I do have some additional questions for you, and ask that you respond to them for the record.

Mr. TAYLOR. All right.

[The questions posed by Representative Anderson and responses received from Mr. Taylor follow:]

Interstate Commerce Commission
Washington, D.C. 20423

November 28, 1983

OFFICE OF THE CHAIRMAN

The Honorable Glenn M. Anderson
Chairman
Surface Transportation Subcommittee
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in regard to the questions submitted to me following the hearing on Mexican Trucking Operations in the United States, which was held by your Subcommittee on October 7, 1983.

Enclosed are my responses to these questions for inclusion in the hearing record.

If I can be of any further assistance, please contact me.

Sincerely,

Reese H. Taylor, Jr.
Chairman

Enclosure

1. Under the Motor Carrier Act, it became very easy for a carrier with only a limited preexisting authority to expand his certificate. Have any of the certificated Mexican carriers attempted to take advantage of this?

Since enactment of the Motor Carrier Act of 1980, no Mexican-domiciled motor carrier of property or passengers holding ICC authority has expanded the scope of its authorized service. There are at present 12 such carriers with ICC authority. Nine of these carriers hold passenger authority, and three hold property contract carrier authority.

Four applications by new Mexican-domiciled carriers are pending before the Commission. Two were filed in 1979 prior to passage of the Motor Carrier Act; the other two were filed in 1981.[1] Decisions have not been issued because of the statutory moratorium on the Commission's authority to issue operating rights to motor carriers domiciled in Mexico [Bus Regulatory Reform Act of 1982, Section 6(9), Pub. L. 97-261, 96 Stat. 1102, 1107-08, codified at 49 U.S.C. 10922(1)]. The moratorium remains in effect until September 1984, or later, if extended by the President, unless removed or modified by the President in whole or in part. When the moratorium ends, we will resume processing the applications.

Recently, the Commission denied an application by a United States-domiciled motor passenger carrier for the reason that the carrier was controlled by a citizen of Mexico, and thus within the terms of the moratorium. A copy of the Commission's decision, in MC-166432, Guaycura Tours, Inc. - Charter Passenger Carrier Application (not printed), decided September 26, 1983, is attached.

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[1] One of the 1979 applications was initially granted and a certificate issued. The decision granting authority, however, was subsequently vacated by the Ninth Circuit Court of Appeals, and the Commission has likewise vacated the certificate.

RB
VS

SERVICE DATE

OCT 14 1983

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-166432

GUAYCURA TOURS, INC. - CHARTER PASSENGER CARRIER APPLICATION
(San Diego, CA)

Decided: September 26, 1983.

By a decision entered July 8, 1983, we held open this proceeding for receipt of additional evidence concerning the citizenship of applicant's principals as relevant to the licensing provisions of 49 U.S.C. 10922(1)(1). Applicant has introduced a statement responsive to the concerns raised in our prior order. Protestant C.E. Swadener, doing business as Pioneer Stage Lines, has filed a reply to applicant's supplemental pleading.

Applicant concedes that its president, Mr. Jorge Arrangure, is a citizen of Mexico. Mr Arrangure, together with his wife, also a Mexican citizen, owns 50 per cent of the stock of Guaycura Tours.[1/] Mr. and Mrs. Arrangure have been permanent legal residents of the United States since 1963 and 1968, respectively. Applicant recites the various legal connections which its president maintains with the United States, including property ownership, payment of taxes, registration with the Selective Service Board, business and financial relationships of an established and continuing nature, maintenance of a California residence and drivers license, and ongoing employment as Executive Director of the San Ysidro (CA) Urban Council. (Applicant's pleading includes supporting documentation, such as personal identification, tax records, and property deeds, confirming the various referenced relationships.)

Applicant argues that the Mexican citizenship of its principal stockholders does not preclude issuance of the proposed operating authority under the terms of 49 U.S.C. 10922(1)(1). By adopting the language "owned or controlled by persons of any contiguous foreign country" [emphasis added] to define the class of carriers subject to the restrictive licensing provisions of section 10922(1)(1), applicant argues, Congress purposefully

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1/ Ownership of applicant's remaining stock is not specifically disclosed. However, applicant characterizes itself as "a 100% minority-owned corporation."

avoided use of the domicile or citizenship of such controlling persons as the basis for determining when sufficient contacts with Mexico[2]/ existed to preclude issuance of authority. Rather, applicant submits, by adopting less specific terminology, Congress intended only to preclude issuance of authority to persons maintaining sufficient contacts with the involved foreign country "so as to discriminate against the United States carriers." Citizenship per se, applicant reasons, is not determinative of such contacts. Accordingly, applicant urges, the statutory provision at subsection 10922(1)(1) vests in the Commission discretion to determine the appropriateness of granting operating authority to carriers owned or controlled by permanent resident aliens who retain Mexican citizenship but otherwise have established significant relationships with the United States.

Given the Arrangures' established contacts with the United States and their extensive participation in the San Diego/San Ysidro community, applicant concludes, the only appropriate disposition of this proceeding would entail issuance of the proposed authority on the premise that applicant's principals, while "from Mexico," are persons of the United States as that term is contemplated by 49 U.S.C. 10922(1)(1). Any other conclusion, applicant argues, would jeopardize the Arrangures' rights as resident aliens, contrary to the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

In reply, protestant argues that the uncontroverted evidence that applicant is owned and controlled by Mexican citizens creates a presumption that any subsequent grant of authority during the prevailing licensing moratorium would be a violation of 49 U.S.C. 10922. Applicant's contentions to the contrary, protestant maintains, misconstrue the simple meaning and intent

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2/ As noted in our prior decision, although the statute speaks in terms of precluding issuance of authority to carriers domiciled in or owned or controlled by persons of any contiguous foreign country, the provision further accords the President discretion to remove or modify this licensing moratorium. This discretion has been exercised as concerns Canadian domiciled or controlled carriers by removal of the moratorium, effective November 30, 1982. The licensing restrictions remain in full effect as concerns carriers domiciled in or owned or controlled by persons of Mexico.

of the statute. Protestant further provides that the purpose of subsection 10922(1)(1) is to establish an absolute licensing moratorium, except as removed or modified by Presidential action. There is no corresponding discretion vested in the Commission to invoke relief from the moratorium other than that determined by the President to be appropriate. Inasmuch as the full bar to issuance of authority for Mexican domiciled, owned, or controlled carriers remains in effect, protestant submits, the proposed authority must be denied.

Protestant suggests that applicant's conduct in submitting false information in its verification statement concerning the citizenship of its principals may "represent a flagrant and/or persistent disregard of the provisions of the [Interstate Commerce] Act." Protestant leaves ultimate determination of this issue and responsive action, if warranted, to the Commission's consideration.

Upon review of the record, as supplemented here, we are persuaded that the Mexican citizenship of applicant's principals places Guaycura Tours within the scope of the licensing moratorium defined at 49 U.S.C. 10922(1)(1). Accordingly, for reasons amplified below, we are precluded by statute from issuing authority to applicant while the moratorium is in effect [until September 1984, a later date by Presidential extension, or such time as the President removes or modifies the moratorium pursuant to 49 U.S.C. 10922(1)(2)].

We are not otherwise persuaded by applicant's assertion that the Commission should exercise discretion under subsection 10922 (1)(1) and defer to the Arrangure's admittedly substantial contacts with the United States as justification for authorizing the proposed operations. As noted in the Commission decisions establishing procedures for compliance with the licensing moratorium, "the mandate of the statutory provision is clear and leaves no discretion with the Commission." See Ex Parte No. 55 (Sub-No. 43D), Certification of Canadian or Mexican Ownership or Contol of Applicants for Motor Common or Contract Carrier Authority, served April 19, 1983.

A review of the legislative history underlying adoption of the licensing prohibition for Mexican domiciled, owned, or controlled carriers confirms that the moratorium was imposed for the purpose of effecting reciprocity with the motor carrier entry policies of Mexico. See S. Rep. 411, 97th Cong., 2d Sess. 19 (1982), reprinted in [1982] U.S. Code Cong. & Ad. News 2308,

2326. Mexican law at present, precludes licensing of United States domiciled, owned, or controlled carriers, including those under the control of United States citizens residing in Mexico. To authorize the service proposed in this proceeding would contravene the clear meaning and enunciated purpose of the statute and would represent a flagrant abrogation of the Commission's mandate to enforce the prescribed moratorium.

The statutory construction exercises introduced by applicant in an attempt to ascribe discretion to the Commission's implementation of the licensing moratorium are materially flawed. The more general language "of such country" was adopted, not as applicant suggests in order to limit the class of Mexican citizens actually affected by the moratorium (i.e., to embrace only those Mexicans who actually are in a position to discriminate against United States carriers), but rather to ensure that citizenship was not the exclusive means by which a carrier's ownership or controlling interests might be deemed within the provision of 49 U.S.C. 10922(1)(1). Alternatively stated, Mexican citizenship of a carrier's principals is the clearest, most conclusive, although not necessarily the exclusive, means of invoking the licensing moratorium. Indeed, in discussing the moratorium's reach, the legislative history speaks in terms of "motor carriers owned or controlled by ... Mexicans" [emphasis added] - clearly and as most commonly understood an abbreviated reference to citizens of Mexico. See H.R. Conf. Rep. 780, 97th Cong., 2d Sess. 38 (1982), reprinted in [1982] U.S. Code Cong. & Ad. News 2342, 2349.

In view of the uncontroverted purpose and rigidly prescribed Commission responsibility under 49 U.S.C. 10922(1)(1), applicant's further allegations concerning the public interest ramifications of its proposed service and the Equal Protection implications of precluding such operations do not warrant and cannot properly be accorded consideration in the context of this proceeding.

Finally, we note that applicamt's allegations concerning the citizenship of its principals, however ill-founded, derive from reasoned consideration of pertinent statutory provisions. Thus, they do not represent flagrant disregard of Commission policy and regulations or willful and malicious misstatements such as would warrant admonition or institution of proceedings either internally or under the Federal criminal provisions of Title 18, United States Code.

No. MC-166432

It is ordered:

The application is denied.

Upon conclusion of the statutory moratorium preventing issuance of authority to Mexican domiciled, owned, or controlled carriers, applicant may file a request for reopening and reconsideration of this proceeding pursuant to 49 U.S.C. 10322(g)(1).

By the Commission, the Review Board, Members Parker, Joyce, and Fortier.

(SEAL)

Agatha L. Mergenovich
Secretary

2. On June 22 of this year, the Ninth Circuit Court vacated the Commission's grant of common carrier operating authority to Auto Express Mexicano. On what grounds was this matter brought before the court, and on what basis was the ruling made?

In G.I Trucking Co., et al. v. United States of America and Interstate Commerce Commission, 708 F.2d 1421 (9th Cir. 1983), the Court of Appeals vacated and remanded the decision in Docket No. MC-145192 (Sub-No. 1), Auto Express Mexicano--Common Carrier Application, in which the Commission issued a certificate of public convenience and necessity in 1981 to a carrier then domiciled in Mexico. This was the last grant of authority to a Mexican carrier prior to the enactment of a moratorium on issuing authority to carriers "domiciled or owned . . . by persons of any contiguous foreign country" in Section 6(g) of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat. 1107-08.

Three domestic trucking companies had objected to the issuance of authority in the United States to a Mexican motor carrier because the Mexican government does not allow United States carriers to operate within Mexico. The trucking companies argued that the Commission was required to consider the issue of reciprocity between governments when it decided Auto Express's application. They sought review of the agency's final decision, which did not discuss reciprocity.

Based on judicial decisions, the Court declined to decide on its own whether the Interstate Commerce Act (prior to the Bus Act revision) required the agency to consider reciprocity before issuing authority to a foreign carrier. The Court of Appeals remanded so that the Commission in the first instance could interpret the Act.

On remand, the Commission vacated Auto Express's certificate and reopened the administrative proceeding to consider the reciprocity issue. In light of the statutory moratorium, the Commission declined to require further proceedings until the moratorium ends. A copy of the Commission's decision is attached. At the time of the remand by the U.S. Court of Appeals, Auto Express was domiciled in California. It is still owned by persons domiciled in Mexico, however, and therefore the statutory moratorium applies.

SERVICE DATE

AUG 12 1983

EC

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-145192 (Sub-No. 1)

AUTO EXPRESS MEXICANO COMMON CARRIER APPLICATION
(San Ysidro, CA)

Decided: August 1, 1983

In G.I. Trucking Co., et al. v. United States of America and Interstate Commerce Commission, No. 81-7298 (9th Cir. June 22, 1983), the United States Court of Appeals for the Ninth circuit "vacated the Commission's grant of a certificate" to Auto Express Mexicano. the court remanded the case "for consideration of the foreign reciprocity arguments raised by petitioners and such other questions of law and fact that materially bear upon the issuance of the certificate to the applicant."

We will vacate Auto Express's certificate and reopen this proceeding for consideration of the foreign reciprocity arguments raised by the protestants as directed by the Court. However, Congress has imposed a moratorium on the issuance of authority to foreign owned or domiciled motor carriers. Bus Regulatory Reform Act of 1982, Section 4(a), Pub. L. 97-261, 96 Stat. 1102, 1107-08, codified at 49 U.S.C. 10922(l), and the President of the United States has not modified or removed the ban as to Mexican owned or domiciled carriers such as Auto Express.1/

In light of our inability to issue authority to Auto Express while the statutory moratorium is in force (until September 1984 or a later date by the President's extension or until the President removes or modifies it), we will not require the submission of further argument or evidence. When the moratorium ends, we will consider the parties' requests for our examination of the foreign reciprocity arguments raised by protestants.

1/ The statute authorizes the President to remove or modify the ban if he determines that removal or modification is in the national interest and notifies Congress in advance. 49 U.S.C. 10922(l)(2).

It is ordered:

1. Auto Express's certificate served May 1, 1981, is vacated.

2. This proceeding is reopened.

3. When the statutory moratorium preventing the Commission from issuing authority to Mexican owned or domiciled motor carriers ends, the parties are invited to file requests for our consideration of the issue of licensing foreign motor carriers raised by protestants.

4. This decision will be effective 15 days after the date service.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

3. I note also in one of the appendices that every certificated freight carrier has authority into California and not Texas, while the authority of all certificated Mexican passenger carriers extends into Texas and not California. I am not sure there is any relevance to these facts, but it is a curious situation. Do you know why this might be?

This situation is not the result of any deliberate action on the part of the Commission. Factors such as geography and commercial traffic patterns may have contributed to the development of this situation. Also, Mexican unions control the cross border traffic on the Mexican side of the Texas border, requiring that vehicles be placarded. These unions appear to have substantial control with regard to entry into business which may explain the limited number of freight carriers applying for authority into Texas. There is no such arrangement at the California border. A possible explanation for the reverse pattern for Mexican passenger carriers is the fact that the population is not very dense below Baja, California, whereas the population is far greater below the Texas border. Also, Greyhound and Trailways handle considerable traffic out of Baja, California.

4. It is my understanding that there may be a serious problem involving the illegal operation of passenger buses coming from both Canada and Mexico. Could you elaborate on this problem and outline for the Subcommittee any possible solutions that may effectively address the situation.

The problems with unlawful passenger operations between points in the United States and points in Canada and Mexico appear less extensive than those which exist in the property transportation segment of the industry.

However, to the extent such operations do exist, safety is a matter of serious concern. For example, there are three known bus companies operating out of the Mexican community in Chicago, Illinois that have been engaged in the transportation of passengers, without ICC authority, from South Texas to the Chicago area. In these cases, safety violations were discovered by the Commission's Office of Compliance and Consumer Assistance. Legal action was taken in Federal Court against the three companies to require compliance, and preliminary injunctions were obtained.

We will continue to monitor the situation and advise you if additional action is needed.

Mr. ANDERSON. We will recess the hearing for lunch and go on a tour.

Mr. TAYLOR. We would like to come along if we may.

[Pause.]

Mr. ANDERSON. Great! We are going to break now and try to be back between 2 and 2:30.

[Whereupon, at 12:45 p.m., a recess was taken to reconvene at 2 p.m.]

AFTERNOON SESSION

Mr. ANDERSON. The meeting of the subcommittee will come to order.

Our next witness is Ben Killingsworth, division commander of the border division of the California Highway Patrol.

TESTIMONY OF BEN KILLINGSWORTH, DIVISION COMMANDER, BORDER DIVISION, CALIFORNIA HIGHWAY PATROL

Mr. KILLINGSWORTH. Your Honor, I am sorry that I don't have prepared remarks. We didn't know of this hearing until about 2 days ago. I would like to say at the outset that the California Highway Patrol is primarily concerned with the safety and law-enforcement aspects of this problem and not with the political or the economic considerations.

In May 1982 we became aware of the problem—or more aware of it—than we had been in the past, and we began to conduct week-long inspections at the border in San Ysidro, 1 week out of each month.

In the beginning, the trucks were in very bad condition. Many of them had brakes that were almost totally defective, vehicles with wheels that were nearly ready to fall off and things of that nature. We continued inspecting trucks one week out of the month until the beginning of 1983 when we started inspecting continuously during the hours that the commercial gate is open. We did this for 3 months to see what the effect might be.

Involved in these inspections was the highway patrol, the department of motor vehicle, public utilities commission, the board of equalization, and sometimes the Interstate Commerce Commission and the U.S. Department of Transportation.

We found, however, because of the change in the Mexican economy that conducting continuous inspections was not cost effective since we were using people who were normally asigned to other duties. The truck traffic dropped by probably 75 percent because of that. Lately, it has been picking up.

There was a great amount of interest at the State level also in this problem, and Senator Ellis in particular was interested and introduced Senate bill 80 which originally provided that Mexican trucks would not be allowed to come across the border unless Mexico allowed reciprocal operating privileges in Mexico by American trucks.

Senate bill 80 passed; however, before it passed that key legislation or that key part of it was taken out, so it does not affect that, and I think the reason it was taken out was it was strongly believed that it would be unconstitutional for the State to pass such a

law, that the law would be unconstitutional because that properly belongs to the Federal Government.

What I think needs to be done in terms of safety and law enforcement is to first establish a permanent inspection facility, adequately staffed, of course, and also that the authority of the various agencies involved be consolidated. With some exception, much of this enforcement could be done by one agency. A notable exception would be ICC where the regulations are so complex that it takes a real expert to apply them, but now you see the list of people that I read to you. There are an awful lot of agencies involved. That is not to mention the Customs and the U.S. Department of Agriculture and the State department of agriculture before they ever get to this other list of people.

By consolidating authority, it would also allow some enforcement of regulations inland at some of the many truck inspection facilities that we already have in operation.

This would also require some changes in State law and in Federal law so that some of the regulations could be more easily enforced. For example, the public utilities regulations are virtually unenforceable. It is really more a matter of auditing, or questioning, add then later following up to enforce. There is no, for example, requirement that there be any evidence of PUC operating rights carried in the vehicle. There is a requirement that there be a number on the vehicle, but there is no way of knowing if that number is real or not or if it belongs to the person who used to own the truck or the one who owns it now.

We also need to change some of the present regulations or procedures that are followed at the border. One would be to prevent empty trucks from coming through the passenger lanes. At this time, all the empty trucks are permitted to come through the passenger lanes and they are able to bypass us even when we are set up at the border.

Also perishable loads can come through 24 hours a day, 7 days a week, so there may not be an answer to that, but at least it is apparent that these people can avoid any kind of inspection.

Also the second border crossing which is now under construction will present a problem at least in the beginning if trucks are allowed to cross at both locations. It won't be possible for us to man both locations, and we hope that some provision will be made to keep it either at one or the other.

There is also the question of the other two crossings, the one at Tecate and the one at Colexico. We know that when we set up for a week or longer, some trucks do go to Tecate to cross, probably those that have the most problems that are most in violation.

In summary, I can say that so far as equipment violations, so far as vehicle equipment safety is concerned, that this can be dealt with very effectively in a manner similar to what we have been doing in the past simply by having an inspection station at the border and inspecting every vehicle. I don't believe that an occasional inspection will do it. It has not done it in the past. For years, we have been coming down here 1 or 2 days a month, and it has not been effective, so you have to be here just about all the time in order to make it work.

Are there any questions?

Mr. ANDERSON. Yes. Well, thank you very much for your testimony.

Are you able legally and as a practical matter, do you have the resources and technical ability to clamp down on Mexican truckers running illegally; operating out of the commercial zone or carrying goods not exempt from economic regulation.

Mr. KILLINGSWORTH. Well, let's talk about——

Mr. ANDERSON. Would your patrolmen, for example, be able to identify these things without again almost——

Mr. KILLINGSWORTH. Are you talking about the ICC regulations?

Mr. ANDERSON. Yes.

Mr. KILLINGSWORTH. No. For example, I know very little about the regulations, but I know as an example that alfalfa pellets are exempt if they are processed using steam, and they are not exempt if they are not or vice versa, something like that. It is very complex, and so you wouldn't be able to expect the average officer to enforce that.

Now, you talked about stickers before on a vehicle. The vehicle is not the issue. It is the load, so putting a sticker on a vehicle isn't going to accomplish much because it is the load which is important.

Mr. ANDERSON. Again, following the same line, how would a highway patrolman know whether a Mexican trucker is engaged in private cartage or operating without authorization out of the commercial zone? They wouldn't know that either, would they?

Mr. KILLINGSWORTH. No, they wouldn't know. So long as you have the free zone and you allow people to come across, then you are faced with that problem.

Now, we have people within the highway patrol who are specialists in truck safety, and those are the people we use. We don't use just the average officer.

Mr. ANDERSON. Is there any financial benefit to the highway patrol or to the State when an unauthorized carrier is apprehended?

Mr. KILLINGSWORTH. Well, let me go back to why we are there. There is a financial benefit because one of the things they most often violate are our registration laws, and we have had the department of motor vehicles working with us at the border. They have a person right there who collects the money on the spot, and so we have collected a considerable amount of money over the time that we have been doing this.

Mr. ANDERSON. Yes, but that's a State responsibility. You get a fine for a State violation there, but when you are checking to see if they are an unauthorized carrier by ICC, you wouldn't be able to get any money back in fines from that, would you—to the State? Wouldn't that all be a Federal violation?

Mr. KILLINGSWORTH. It would be Federal, yes.

Mr. ANDERSON. Yes.

Mr. KILLINGSWORTH. PUC would be the State.

Mr. ANDERSON. Yes. Now—and I am assuming your answer is no—isn't this a disincentive that dictates against your patrolmen from taking action? Why stop an unauthorized truck or go through the paperwork when they could be going after other types of criminal activities? Don't you think it would help if there was a finan-

cial incentive for the stopping of these trucks and for doing something about the Federal violations?

Mr. KILLINGSWORTH. Well, let me say that officers don't think in those terms at all. Officers don't think about whether there is a financial incentive in making a stop or arrest at all.

The highway patrol is not funded by any fine money. We are funded by registration fees, so there is the one area where we do have some incentive.

So far as making a distinction between whether a law is Federal or State and where the fine money might go, we don't think like that. That doesn't enter our heads. It may enter the head of somebody who is controlling our budget, but not us.

Mr. ANDERSON. So you don't think there will be any incentive to try to divert some of that fine money or whatever it would be from the Federal Treasury to the State for that particular kind of enforcement.

Mr. KILLINGSWORTH. I don't think that by and large the fine money pays for the cost of enforcing laws anyway.

Mr. ANDERSON. Yes.

Mr. KILLINGSWORTH. I can't think of any case where you make money by enforcing the law.

Mr. ANDERSON. Well, you do have your weight people checking on weights.

Mr. KILLINGSWORTH. Yes.

Mr. ANDERSON. I know at one time we were told one of the disincentives was that you didn't have a financial interest in that, so you didn't put officers out for it, where you would go out and have your portable scales. Obviously any trucker that goes along the main highway and stops at the regular truck weighing place, knows that he is going to be weighed, so he learns how, when he is running heavy, to avoid them.

Then you have your people in route checking with their portable——

Mr. KILLINGSWORTH. With the portable——

Mr. ANDERSON [continuing]. Scales.

Mr. KILLINGSWORTH. Yes.

Mr. ANDERSON. And we have always—at least, we have been led to believe that there was a certain amount of incentive there. If you didn't get anything from the State why would you put people on doing those kinds of jobs?

Mr. KILLINGSWORTH. Well, we do put——

Mr. ANDERSON. Maybe the patrolman himself wouldn't have this concern, but surely, the people in charge of it would think that if the C.H.P. got something back, you could hire so many more patrolmen to go out and check on these things.

Mr. KILLINGSWORTH. Well, we have a lot of people who do just that.

Mr. ANDERSON. Yes.

Mr. KILLINGSWORTH. So we probably in my division have 12 people at least who do that with the portable scales.

Mr. ANDERSON. Would it make it easier for you with respect to your enforcement responsibilities if all Mexican trucks operating in the United States were required to carry proof of insurance?

Mr. KILLINGSWORTH. That's not something that we are now enforcing, but if we were enforcing it, yes. If there was a requirement that they had to carry proof of financial responsibility, yes, of course, it would. Any time you are trying to enforce a law, there has to be a relatively simple and reliable means of enforcing it, and that's the problem with PUC and ICC now, that they are extremely difficult to enforce.

Mr. ANDERSON. Duncan.

Mr. HUNTER. Thank you, Mr. Chairman.

I have just a couple of questions. We just came from an inspection yard—a truck inspection yard——

Mr. KILLINGSWORTH. Yes.

Mr. HUNTER [continuing]. And while we were there we noticed one of the trucks had had an open load of glass which looked like it could come off the truck—it was full to capacity—it could come off if the truck was jarred. The driver had no ICC operating permit, and he really didn't have a justification, I understand—although he didn't realize it—that glass is perhaps one of the exempt commodities that can be moved without having an ICC permit.

As I recall, he didn't have any license tags on his truck——

Mr. KILLINGSWORTH. Yes.

Mr. HUNTER [continuing]. Which I think is something that you folks are interested in, and it occurred to me that the place—you stated that you needed to have an inspection station. That truck inspection station, it would seem to me, is the place where this would need to take place, where you operation should take place.

Mr. KILLINGSWORTH. That's exactly where we do it.

Mr. HUNTER. Do you have people down there?

Mr. KILLINGSWORTH. We don't all the time. We do one week out of the month.

Mr. HUNTER. OK.

Mr. KILLINGSWORTH. It is right there in Virginia Street, the little street that you went into right before you went into the yard.

We got Cal Trans to pave that—the shoulder. You might have noticed a trailer sitting there. We rent that trailer from Cal Trans as a little office for DMV to use, and if we had more people, we would be there all the time.

Mr. HUNTER. OK. Then my question is simply this: Because if you have a CHP and have to run these people down on Highway 5 going up to Sacramento, it is going to cost you a certain amount of money to run them down, ticket them, et cetera. We have a natural control point here which is the border, and you have the trucks coming in fairly consistently and constantly, and I would venture to say that if you were down there right now, or were down there with us when we were down there, we could have walked probably around that dock and come up with 15 or 20 violations, and it would seem to be more effective—more cost effective—to have some folks down there full time even if you had only 1 or 2 people basically stopping them at the source instead of letting them come through where it is going to take a lot of resources to run these people down on the highway.

In other words, I don't understand the economics of not having somebody down there full time.

Mr. KILLINGSWORTH. Well, the economics are simply these: that we don't have anybody that has been designated to do that job. The people that are trained and equipped to do this work are working out on the roads within San Diego County.

Now, as far as productivity is concerned, they can write more tickets doing that than they can at the border.

Perhaps—they can. Perhaps——

Mr. HUNTER. Do you mean that it is easier for them to catch the guys once they get out on the open highway?

Mr. KILLINGSWORTH. Not necessarily Mexican trucks.

Mr. HUNTER. OK.

Mr. KILLINGSWORTH. But we have lots of violations from American trucks and trucks from other States, so that's the problem. We can't only be concerned with Mexican trucks because they are a very small minority of the trucks that are operating on the highways.

Mr. HUNTER. OK. Well, my question was could you spare enough people to the ICC, for example, so they could have a person down there full time? They have got a budget and they have got a couple of figures as to what it would cost, and it would seem that it might be a worthwhile investment to have one person at that station.

Mr. KILLINGSWORTH. One person is not nearly enough. One person cannot do that job. It takes several people to do the job.

Mr. HUNTER. How many people would you say you would need to have a presence at that facility?

Mr. KILLINGSWORTH. When traffic is operating at say pre—say up until the first of the year, we would have five or six people working there.

Mr. HUNTER. Full time?

Mr. KILLINGSWORTH. Five or six. You see, you can't—well, let me back up. If we had a decent facility so we didn't have to work in the middle of the street, it might be a different matter. We could pull people in there one at a time. One person is not enough.

Mr. HUNTER. I'm talking about in the compound.

Mr. KILLINGSWORTH. We don't work in the compound.

Mr. HUNTER. But could we set up if we had some type of arrangement with the Federal Government a station in the compound because in the compound is where these trucks pull up, and they have got to park at the dock to be inspected——

Mr. KILLINGSWORTH. Well——

Mr. HUNTER [continuing]. And at that time you can say, "Hey, that guy doesn't have a license plate. This guy has got an open load of glass, and this gentleman over here has bald tires."

Mr. KILLINGSWORTH. Sure.

Mr. HUNTER. It would seem to be a natural place because they already have had to stop to meet these other requirements.

Mr. ANDERSON. Along that line, for example, we asked the guy what his authority was and he said that he was a private carrier. Well, obviously, he was not. He was for hire. When we saw his expired certificate, he didn't have a certificate that was valid because it expired in July.

Mr. KILLINGSWORTH. Yes.

Mr. ANDERSON. So he was running without any kind of a license. He didn't have a license on the trailer because in Mexico you don't

have to have a license on the trailer. I didn't know that, so there was no license on the back of it at all.

What could you charge the guy with even though you may have known he was violating a half a dozen of our laws? What could you charge him with?

Mr. KILLINGSWORTH. That's not true.

Mr. ANDERSON. He is on his way to Los Angeles now.

Mr. HUNTER. One way to handle this was that one of the gentlemen said that the CHP would pick him up down the road somewhere.

Mr. ANDERSON. What could they arrest him for?

Mr. HUNTER. I think they said that the open glass——

Mr. KILLINGSWORTH. You were talking about the glass, if it was an unsafe load, we would arrest him for that. If it was registration, we would arrest him for that. If it was drivers license, we would arrest him for that.

Mr. ANDERSON. His certificate, I guess, had expired in July.

Mr. KILLINGSWORTH. Yes.

Mr. ANDERSON. So he was running without anything, and obviously what we saw there showed that he was for hire, and he wasn't a private carrier, and he had no license plates on the truck because in Mexico you don't have to have any.

Mr. KILLINGSWORTH. Well, OK, fine. In this year alone, we have collected over $83,000 in registration fees. Now, this is not as high as it should be because they have been allowing 90-day permits. The new law that becomes effective the first of the year will not allow 90-day permits, so that every vehicle that comes across that is not properly registered will have to get a full-year registration.

There has also been a controversy about whether a Mexican operator had to have a California drivers license. We have taken the position that they do, and we have written tickets for it. Some DMV offices have released them. Some courts have released them. That has been corrected in the law.

We have just in this year inspected 1,976 trucks. Now, that's not every truck that comes across because some trucks have stickers—were given stickers when we inspected them, and many of the trucks come across several times a day.

We have found 423 registration violations. All in all, we have issued 1,216 enforcement documents. Now, out of the 1976 that were inspected, 1,216 got tickets. We put—283 of those were turned around and sent back because their mechanical condition was so bad that we wouldn't allow them to continue in violation.

Mr. KILLINGSWORTH. The majority of those that we inspected. I won't say the majority that comes through because some of them have been inspected and are in good condition and they just go back——

Mr. HUNTER. But if that's a representative sample, it's a pretty good indication.

Mr. KILLINGSWORTH. It is.

Mr. HUNTER. Again, it seems to me that the place to stop these people from coming in or the place to take care of the problem is right there when they come in before they get on the highway.

Mr. KILLINGSWORTH. I agree with you.

Mr. HUNTER. Do you think it would take five or six people to be dedicated to that station to handle it full time?

Mr. KILLINGSWORTH. It would take more than that to do it during the full day because the hours that the gate is open extend beyond an 8-hour shift, so what we have done is we alternate either coming in early and coming in late and stay the whole day.

Mr. HUNTER. Yes.

Mr. KILLINGSWORTH. It would probably take on the order of 10 or 12 people to operate it full time. Now, that's the highway patrol. Let me just give you an example of a typical setup—four uniformed officers, two motor carriers, one DMV, and two PUC. That was in February, for example. In July, we had two uniformed officers, one motor carrier who are truck inspection specialist, one DMV, two PUC, and one ICC.

Mr. HUNTER. Yes.

Mr. KILLINGSWORTH. I'll be giving you all that information, but we cut back because of the lower amount of traffic.

We want to be there all the time.

Mr. HUNTER. OK.

Mr. KILLINGSWORTH. But because the truck traffic changed so much and also because the Senate was considering a law which would have kept them out anyway, we didn't go forward with our plans.

Now, that at least the California Legislature has not moved in that direction, we will be probably considering more strongly—but perhaps we should wait and see what happens with the Federal law because if you close the border, there will be no need to budget for additional people to inspect trucks. They just won't be coming across.

Mr. HUNTER. But you would be able to accommodate yourself in the truck inspection complex if you had, for example, a couple of mobile homes or something like this to use? It looks like they have got quite a bit of space in there.

Mr. KILLINGSWORTH. There is space if it is allowed——

Mr. HUNTER. And then you could work off of that dock where they have——

Mr. KILLINGSWORTH. Well, I don't think that they would want us working off the dock, and I don't know that we would want to because we have to have the driver in the cab with the engine running, for example——

Mr. HUNTER. Yes.

Mr. KILLINGSWORTH [continuing]. So that we can check the break system.

Mr. HUNTER. Well, I understand that, but what I am saying is that they all come up to the dock basically to be inspected, and you could have them—you have got them all there at one time is what I am saying.

Mr. KILLINGSWORTH. It could be a lot better than what we have been doing because what we have been doing is very makeshift. Easily, we could come up with some kind of a facility and system to make it worthwhile.

Mr. HUNTER. They indicated to us that they wouldn't mind having you there——

Mr. KILLINGSWORTH. Well——

Mr. HUNTER [continuing]. Especially when they said, "Here are some violations. There is nobody to take care of them now, but maybe down the road you will catch them."

Mr. KILLINGSWORTH. Well, maybe down the road, we will, but you see, many of those trucks don't go down the road. They only go into the city of San Diego.

Mr. HUNTER. Yes.

Mr. KILLINGSWORTH. And we operate on the freeways in the city, but—and it is easy to get into Los Angeles without being detected. Now, they can simply take Interstate 15 and they bypass our big inspection facility on Interstate 5 up by Oceanside.

We are going to have stations on Interstate 15 in another year, but still they will be able to get by if they want to badly enough.

Mr. HUNTER. Sure.

Mr. KILLINGSWORTH. But you are right. The place to get them is right at the border, and we get them going both ways—coming and going out—and it is very effective. I am sure if we were there all of the time, it would be just a matter of a short period of time when they would be in as good a condition as say the U.S. truck population is which is not that perfect.

Mr. HUNTER. Yes, but at least we use licenses.

Mr. KILLINGSWORTH. Yes. Well, we have been selling a lot of licenses and a lot of registrations.

Mr. HUNTER. Is that right?

Mr. KILLINGSWORTH. Yes, a lot. In fact, the way it has kind of worked out is because DMV is in the little trailer, the truckdriver comes up near the border, and he sees that we are set up, so he leaves his truck, walks across the border, buys the registration, and then goes back. That avoids getting a citation, so in a way, we have just set up a DMV office there. It has been effective, and it is very cost-effective.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. SUNIA. No questions.

Mr. ANDERSON. Thank you, Ben, for your presentation. We will be looking forward to your prepared remarks. They will be made a part of the record.

Mr. ANDERSON. Our next witnesses are a panel consisting of: Mr. Peter Baish, of the Customs Service; Mr. Arnold Levine of the Department of Transportation; and Ms. Marian Barell of the Special Trade Office, Special Trade Representative.

[Pause.]

Mr. SUNIA. We have your statements which will be made a part of the record, and we welcome you to the hearings again.

[Statements of Mr. Baish and Mr. Levine follow:]

TESTIMONY BY
PETER J. BAISH
ASSISTANT REGIONAL COMMISSIONER OF OPERATIONS
(PACIFIC REGION)
BEFORE THE

HOUSE SUBCOMMITTEE HEARING
ON SURFACE TRANSPORTATION
OCTOBER 7, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I APPRECIATE THE OPPORTUNITY TO REPRESENT THE U.S. CUSTOMS SERVICE RELATING TO THE ADMISSION OF FOREIGN MOTOR CARRIERS INTO THE U.S. THE SURFACE TRANSPORTATION ACT OF 1982 CHARGES THE SECRETARY OF THE TREASURY WITH THE RESPONSIBILITY TO ENFORCE THE REQUIREMENT THAT CERTAIN TRUCKS HAVE IN-THE-CAB A CERTIFICATE OF FINANCIAL RESPONSIBILITY UPON CROSSING OUR BORDERS.

WE SHARE IN THE CONCERN THAT TRUCKS ENTERING THE UNITED STATES FROM CONTIGUOUS FOREIGN COUNTRIES SHOULD BE FULLY INSURED. WE ALSO RECOGNIZE THAT THE ENFORCEMENT OF THIS REQUIREMENT COULD BE EFFECTIVELY ACCOMPLISHED AT OUR BORDER PORTS. AN INTEGRAL PART OF THE CUSTOMS MISSION IS BEING A REPRESENTATIVE FOR NEARLY ALL FEDERAL AGENCIES AT U.S. PORTS OF ENTRY AND WE CURRENTLY ENFORCE SOME 400 DIFFERENT LAWS FOR 40 AGENCIES. THE ASSUMPTION OF RESPONSIBILITIES FOR ENFORCING THE SURFACE TRANSPORTATION ACT IS NOT IN ITSELF AN ONEROUS BURDEN.

HOWEVER, THE CUSTOMS SERVICE IS ALSO VERY CONCERNED WITH THE FACILITATION AND EXPEDITIOUS PROCESSING OF INTERNATIONAL COMMERCE AND TRAVELERS ARRIVING INTO OUR COUNTRY. IN CONCERT WITH THE ADMINISTRATION GOAL TO REDUCE THE SIZE OF GOVERNMENT, WE MUST ACHIEVE THESE DUAL OBJECTIVES OF EFFECTIVE ENFORCEMENT AND INCREASED FACILITATION WITH A DECREASING NUMBER OF PERSONNEL AND RESOURCES. WE HAVE BEEN ABLE TO SUCCESSFULLY

FULFILL THE DUAL CUSTOMS MISSION IN MOST OF OUR AREAS OF RESPONSIBILITY AND IT IS OUR AIM TO ACCOMPLISH THIS BALANCE WITH THE SURFACE TRANSPORTATION ACT.

THE MOST SERIOUS CONCERN FROM THE CUSTOMS PERSPECTIVE IS THAT THE ENFORCEMENT OF THIS ACT, AS CURRENTLY ENVISIONED, WILL CAUSE UNACCEPTABLE DELAYS FOR MOTOR CARRIERS AT OUR PORTS OF ENTRY. THE PROVISIONS OF THE ACT REQUIRE EXTENSIVE QUESTIONING TO DETERMINE WHETHER A MOTOR CARRIER IS OPERATING FOR HIRE. ONCE DETERMINED, A CHECK MUST BE MADE OF THE CERTIFICATE OF FINANCIAL RESPONSIBILITY AND, LASTLY, A REVIEW TO DETERMINE THE AUTHENTICITY OF THE CERTIFICATE AND IF IT APPLIES TO THE VEHICLE UNDER SCRUTINY. THE LATTER STEPS CAN BECOME VERY COMPLEX AND TECHNICAL AND, IN MANY CASES, ARE BEST HANDLED BY A QUALIFIED OFFICIAL FROM THE BUREAU OF MOTOR CARRIER SAFETY.

CUSTOMS IS NOW PROCESSING EMPTY TRUCKS, AND PASSENGER VEHICLES THAT OFTEN USE THE SAME TRAFFIC LANES, IN A MATTER OF SECONDS FOR EACH VEHICLE. THE POTENTIAL TRAFFIC DELAYS AND LOSS OF PERISHABLE CARGO THAT COULD RESULT FROM A TOTAL APPLICATION OF THIS LAW IS A MATTER OF GRAVE CONCERN TO ALL OF US. IT IS IMPORTANT THAT AN EFFORT BE MADE TO SIMPLIFY THE ENFORCEMENT PROCEDURES.

SINCE THE PASSAGE OF THIS LAW, WE HAVE CLOSELY COORDINATED OUR EFFORTS WITH MEMBERS OF THE DEPARTMENT OF TRANSPORTATION, INCLUDING REPRESENTATIVES FROM THE BUREAU OF MOTOR CARRIER SAFETY. THEY HAVE BEEN EXCEPTIONALLY POSITIVE AND HELPFUL. WE RECEIVED EARLY COPIES OF THEIR REGULATIONS AND HAVE HAD NUMEROUS MEETINGS ON THE MOST EFFECTIVE MEANS OF ENFORCING THE ACT. WE HAVE ALSO ENSURED THAT OUR FIELD OFFICES WERE FULLY APPRISED OF OUR OBLIGATIONS.

ON APRIL 19, 20, AND 21 MEMBERS OF THE INTERSTATE COMMERCE COMMISSION AND DOT CONDUCTED AN ENFORCEMENT EFFORT IN SAN YSIDRO, CALEXICO AND NOGALES. THE CUSTOMS SERVICE PARTICIPATED BY PROVIDING FACILITIES AND DUAL LANGUAGE CUSTOMS INSPECTORS TO WORK WITH THOSE ICC AND DOT AGENTS THAT WERE ACTUALLY CONDUCTING THE EFFORT. THIS EFFORT WAS TO CONTINUE ALONG THE TEXAS BORDER AT BROWNSVILLE, DEL RIO AND EL PASO THE FOLLOWING WEEK BUT IT WAS HALTED BY A COURT ORDERED INJUNCTION.

AT A RECENT MEETING, IT WAS AGREED THAT THE BUREAU OF MOTOR CARRIER SAFETY WOULD SEND ONE OF THEIR INSURANCE EXPERTS TO EL PASO TO DEVELOP INFORMATION WHICH WOULD LEAD TO INSTRUCTIONS WHICH CUSTOMS COULD USE TO CONDUCT PERIODIC BLITZES AND BE REASONABLY ASSURED THAT WE WERE TURNING BACK ONLY THOSE VEHICLES THAT WERE NOT IN COMPLIANCE WITH THE LAW.

IN THE INTERIM, CUSTOMS OFFICERS TRULY ARE NOT IN A POSITION TO ENFORCE THE LAW WITHOUT A QUALIFIED BUREAU OF MOTOR CARRIERS SAFETY REPRESENTATIVE IMMEDIATELY AVAILABLE. IT IS POSSIBLE THAT ALTERNATIVE SOLUTIONS MAY BE POSSIBLE THAT WOULD SIMPLIFY AND EXPEDITE THE ENFORCEMENT PROCESS.

WE IN THE CUSTOMS SERVICE ARE WILLING TO CONTRIBUTE OUR RESOURCES AND LEND OUR ASSISTANCE TO THE DEVELOPMENT OF AN EFFECTIVE SYSTEM THAT WILL FULFILL THE WORTHY INTENT OF THE SURFACE TRANSPORTATION ACT WITHOUT ADVERSELY AFFECTING LEGITIMATE INTERNATIONAL COMMERCE.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS STATEMENT AND I REMAIN AVAILABLE TO ANSWER QUESTIONS AS BEST I CAN.

Statement of
Arnold Levine
Chief, International Trade Division of
the Department of Transportation
Before the House Subcommittee
on Surface Transportation
On Issues Related to the Operation of
Foreign Motor Carriers in the United States
October 7, 1983

Dear Mr. Chairman and Members of the Subcommittee: My name is Arnold Levine, I am the chief of the International Trade Division in the Office of the Secretary of Transportation. For the past two years I have followed issues relating to the operation of foreign motor carriers in the United States and assisted in developing Administration policy in this area. My testimony today focuses on two recent changes in U.S. law -- section 6(g) of the Bus Regulatory Reform Act of 1982 and section 406(b) of the Surface Transportation Assistance Act of 1982 -- in particular as they affect trucking between the United States and Mexico.

With the passage of the Motor Carrier Act of 1980 the United States adopted an economic regulatory policy significantly less stringent than the one followed in Mexico. Particularly with respect to entry policies, these differences in regulatory regimes exacerbated an imbalance in the competitive opportunities available to U.S. and Mexican motor carriers to transport international traffic. Mexican motor carriers gained the ability to enter the U.S. market with relative freedom, offer single-line for what had been joint-line service, and potentially divert the U.S. portion of international traffic from U.S. carriers. U.S.

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motor carriers, however, because of extremely restrictive entry policies in Mexico, were unable to offer similar competitive services. Generally difficult economic times, coupled with heightened competition in the U.S. market, made the U.S. trucking industry particularly sensitive to potential losses of international traffic.

Mexico, with very minor exceptions, prohibits U.S. commercial motor carrier operations on its highways. Although Mexican federal law (the Luis Cortines Decree of 1955) authorizes U.S. commercial vehicles to operate in a border zone extending approximately 20 kilometers into Mexico, only in the Nuevo Laredo area are any significant operations in this zone actually permitted. At other major border crossing points (e.g. Brownsville and El Paso, Texas, Nogales, Arizona, and San Diego, California), U.S. trucks are virtually barred from operating in the border zone. Only on an emergency basis or in cases requiring highly specialized equipment have U.S. trucks ever been permitted to operate beyond the border zone into the interior of Mexico.

In response to these circumstances and related circumstances affecting Canada, the Congress included in the Bus Regulatory Reform Act of 1982, signed into law on September 20, 1982, section 6(g), imposing a moratorium on grants of new operating authority to Mexican (and Canadian) motor carriers. The moratorium did not, however, affect the operations of Mexican (and Canadian) motor carriers under any U.S. operating authority they held at the time

of its imposition; neither did it affect operation not requiring an ICC permit or certificate (i.e., private carriage, exempt carriage, and commercial zone carriage). Following imposition of the moratorium, the ICC required all applicants for operating authority to attest that they were not owned or controlled by persons domiciled in a continguous foreign country. No new operating authority has been granted to any Mexican-owned or controlled motor carrier since the imposition of the moratorium.

Over the past two years we have held a series of consultations with Mexican officials, under the auspices of the U.S.-Mexico Joint Commission on Commerce and Trade, in efforts to gain greater access to Mexico for U.S. motor carriers and avert the moratorium. Unfortunately, those discussions did not yield any progress. The last series of meetings on trucking took place in Washington on July 8 and 9, 1982, before the imposition of the moratorium. The change in administrations in Mexico, coupled with that country's financial difficulties and economic restructuring, appear to have diverted attention from international trucking issues. U.S. Embassy staff has recently approached the Mexican Government in efforts to schedule an additional round of consultations on U.S.-Mexico trucking. To date, no new discussions have been scheduled. The moratorium on new grants of ICC operating authority to Mexican motor carriers remains in full force.

In a matter not directly related to the moratorium but nevertheless directly affecting Mexican motor carrier operations

in the United States, the Congress included in the Surface Transportation Assistance Act of 1982, signed into law on January 6, 1983, section 406(b), imposing a new requirement on most for-hire motor carriers and some private motor carriers domiciled in Mexico (and Canada) to carry on board each vehicle operated in the United States evidence of financial responsibility. The Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS) issued regulations (49 CFR Part 387) implementing this provision on February 7, 1983.

In response to complaints about widespread illegal Mexican trucking operations in California, the ICC assigned a Spanish speaking investigator to the San Diego area in September 1982. Since that time, periodic road checks have been made along the length of the border. A total of 97 passenger carriers and 2482 property carriers have been checked, including those checked during a joint DOT-ICC-Customs-USTR effort in April. Eleven passenger vehicles and 117 property vehicles were suspected of engaging in unlawful operations. Of these, five passenger vehicle investigations and six property vehicle investigations have been

completed and are under review for legal action. Another case is pending. Warning letters have been issued in the remaining cases.

In connection with the moratorium and the new requirement that proof of financial responsibility be carried in the vehicle, DOT, ICC and Customs officials cooperated in a series of motor carrier checks at San Ysidro and Calexico, California, and Nogales, Arizona, during the week of April 25, 1983. The objectives of the checks were to assure that:

-- Mexican motor carriers maintain adequate insurance coverage on each vehicle operated in the United States;
-- Mexican trucks entering the United States comply with U.S. safety regulations;
-- the moratorium on new grants of ICC operating authority to Mexican motor carriers is not being thwarted by illegal operations; and
-- Customs inspectors have an opportunity to work first hand with DOT and ICC field staff.

During three days of checks approximately 1900 vehicles entered the United States through the commercial gates of the three crossing points. Most vehicles were not required to meet U.S. financial responsibility requirements (e.g. were private carriers or operated vehicles less than 10,000 pounds GVWR). A total of 101 vehicles were denied entry to the United States for failure to comply with financial responsibility requirements. The ICC

detected 20 instances of motor carriers operating without the proper authority.

Additional checks were scheduled to be conducted in Brownsville, Hidalgo, Laredo, and El Paso, Texas, during the week of May 2, 1983. Arguing that irreparable harm would result if trucks carrying their products were turned back at the border, parties involved in the distribution of fruits and vegetables through the port of Hidalgo sought and were granted a temporary restraining order in the United States District Court for the Southern District of Texas, preventing the full enforcement of relevant DOT insurance regulations. Based on this action and additional concerns raised by local officials and business community spokespersons, all checks along the Texas border for compliance with the financial responsibility requirements were postponed. A set of stipulations agreed to by the U.S. Government and the plaintiffs in this case, enables the plaintiffs to meet fully the financial responsibility requirements in as economical and administratively unburdensome manner as possible.

With respect to the future, efforts to schedule a meeting of the Transportation Working Group of the U.S.-Mexico Joint Commission on Commerce and Trade will continue. A principal agenda item for any meeting of the Transportation Working Group would be discussions about improving the access of U.S. motor carriers to Mexico. In the absence of significant progress in this area, the moratorium on grants of new U.S. operating authority to Mexican motor carriers will continue in full force.

Periodic checks at border crossing points will be held to enforce the new proof of financial responsibility requirements. Training that will permit Customs inspectors to assist more fully in enforcement activities is being scheduled. Resolution of the problems that led to the imposition of a temporary restraining order in Hidalgo, Texas, will permit full enforcement of financial responsibility requirements along this part of the border.

Mr. Chairman, that concludes my prepared testimony. I would be pleased to answer any questions you or other members of the Subcommittee might have.

REPORT ON THE STATUS OF INTERNATIONAL TRUCKING BETWEEN THE UNITED STATES AND CANADA AND MEXICO

BACKGROUND

Conflicting Motor Carrier Entry Policies. With the passage of the Motor Carrier Act of 1980 the United States adopted an economic regulatory policy significantly less stringent than those followed in Canada and Mexico. Particularly with respect to entry policies, these differences in regulatory regimes created an imbalance in the competitive opportunities available to U.S. and Canadian and Mexican motor carriers to transport international traffic. Mexican and Canadian motor carriers gained the ability to enter the U.S. market with relative freedom, offer single-line for what had been joint-line service, and potentially divert the U.S. portion of international traffic from U.S. carriers. U.S. motor carriers, however, because of more restrictive entry policies in Mexico and Canada, were less able to offer similar competitive services. Generally difficult economic times, coupled with heightened competition in the U.S. market, made the U.S. trucking industry particularly sensitive to potential losses of international traffic.

Mexico, with very minor exceptions, prohibits U.S. commercial motor carrier operations on its highways. Although Mexican federal law (the Luis Cortines Decree of 1955) authorizes U.S. commercial vehicles to operate in a border zone extending approximately 20 kilometers into Mexico, only in the Nuevo Laredo area are any significant operations in this zone actually permitted. At other major border crossing points (e.g. Brownsville and El Paso, Texas, Nogales, Arizona, and San Diego, California), U.S. trucks are virtually barred from operating in the border zone. Only on an emergency basis or in cases requiring highly specialized equipment have U.S. trucks ever been permitted to operate beyond the border zone into the interior of Mexico.

The Canadian Government has delegated the responsibility for regulation of motor carriers. Each Province regulates provincial, inter-provincial and international motor carrier operations. Although there are variations in detail among each of the Provinces, regulation of inter-provincial and international carriers generally resembles that which was followed by the United States prior to the enactment of the Motor Carrier Act of 1980. U.S. motor carriers are permitted to operate into and throughout Canada. Although the inter-provincial and international entry standards applied by the Provinces are more stringent than the standard applied by the Interstate Commerce Commission (ICC) in the United States, those standards appear to be applied in a non-discriminatory fashion. Under the Foreign Investment Review Act (FIRA) the Canadian federal government reviews certain investments by foreign firms, including motor carriers, to be certain that such investments will be in Canada's best interests. Less than 30 motor carrier investments have been reviewed under FIRA, with

three being denied. In cases where approvals have been granted, U.S. motor carriers have frequently had to agree to certain terms and restrictions (e.g. levels of Canadian employment and management representation, Canadian sources of supply, route restrictions) as a condition for approval.

Section 5(g) of the Bus Regulatory Reform Act of 1982. In response to the circumstances cited above, the Congress included in the Bus Regulatory Reform Act of 1982, signed into law on September 20, 1982, section 6(g), adding a new subsection to section 10922 of title 49 U.S.C. The new subsection imposed a moratorium on grants of new operating authority to Mexican and Canadian motor carriers. The moratorium did not, however, affect the operations of Mexican and Canadian motor carriers under any U.S. operating authority they held at the time of its imposition; neither did it affect operations not requiring an ICC permit or certificate (private carriage, exempt carriage, and commercial zone carriage). Specifically the new subsection reads:

> "(1)(1) Except as provided in paragraph (2) of this subsection, the Commission, notwithstanding any other provision of law (other than such paragraph (2)), shall not issue any certificate to any motor common carrier, or any permit to any contract carrier, domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country in the two-year period beginning on the effective date of this subsection. The President of the United States may extend, beyond such two-year period, such moratorium with respect to any contiguous foreign country or political subdivision thereof which substantially prohibits grants of authority to persons from the United States to provide transportation by motor vehicle for compensation in such foreign country or political subdivision. (2) the President of the United States may remove or modify, in whole or in part, any moratorium imposed under paragraph (1) of this subsection on the issuance of certificates or permits if the President determines that such removal or modification is in the national interest and notifies, in writing, the Congress of such removal or modification before the date on which such removal or modification is to take effect. In any case in which such moratorium applies to a contiguous foreign country or political subdivision thereof which substantially prohibits grants of authority to persons from the United States to provide transportation by motor vehicle for compensation in such foreign country or political subdivision, such removal or modification shall not take effect before the 60th day following the date on which the Congress is notified of such removal or modification."

Following imposition of the moratorium, the ICC required all applicants for operating authority to attest that they were not owned or controlled by persons domiciled in a contiguous foreign country.

Noting the significant differences between the degree of access afforded U.S. motor carriers in Canada and Mexico and the absence of discrimination on the part of Canadian motor carrier regulatory authorities, upon signing the Bus Regulatory Reform Act of 1982, President Reagan partially lifted the moratorium as it applied to Canada. The President's actions in effect left the moratorium in place only for Canadian motor carriers seeking authority to carry international traffic in single-line service. See Attachment A for the President's memorandum to the United States Trade Representative on this matter.

Section 406 (b) of the Surface Transportation Assistance Act of 1982. In a matter not directly related to the moratorium, but nevertheless directly affecting Mexican and Canadian motor carrier operations in the United States, the Congress included in the Surface Transportation Assistance Act of 1982, signed into law on January 6, 1983, section 406(b), adding a new paragraph to section 30(c) of the Motor Carrier Act of 1980. The paragraph imposed a new requirement on most for-hire motor carriers and some private motor carriers domiciled in Mexico and Canada to carry on board each vehicle operated in the United States evidence of financial responsibility. Specifically, the new paragraph reads:

> "(2)(A) Any person domiciled in any contiguous foreign country who provides transportation by motor vehicle to which any of the minimal levels of financial responsibility established under this section apply shall have evidence of such financial responsibility in such vehicle at any time such person is providing such transportation.
>
> "(B) The Secretary of Transportation and the Secretary of the Treasury shall deny entry into the United States of any motor vehicle in which there is not evidence of financial responsibility required to be in such vehicle under subparagraph (A) of this paragraph."

The Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS) issued regulations (49 CFR Part 387) implementing this provision on February 7, 1983. Initial enforcement efforts are described below.

SUMMARY OF ACTIVITIES RELATING TO CANADA (See Attachment B)

Ex Parte No. MC-157. On February 11, 1982, the ICC initiated an investigation "to determine whether existing Canadian law and policy effectively discriminate against U.S. motor carriers, precluding their participation in the single-line transportation of international general commodity freight." Specifically, the ICC investigated:

- whether it could consider Canadian treatment of U.S. motor carriers seeking Canadian operating authority when deciding applications by Canadian motor carriers for U.S. operating authority;

- o whether Canadian Provinces apply entry standards to U.S. carriers different from those applied to Canadian carriers;

- o the effects of FIRA reviews on U.S. motor carriers seeking to operate in Canada; and

- o options available to the ICC in the event that Canadian discrimination against U.S. carriers was found.

Until completion of its investigation, the ICC delayed final processing of pending Canadian motor carrier applications

On October 8, 1982, the ICC issued its decision on Ex Parte No. MC-157, finding that:

- o It is within the ICC's mandate to consider the issue of Canadian reciprocity for U.S. motor carriers in deciding applications of Canadian motor carriers for U.S. operating authority.

- o Canadian provincial motor carrier entry standards, although more restrictive than those of the United States, are applied non-discriminatorily to U.S. and Canadian applicants. Nevertheless, the disparity between U.S. and Canadian provincial entry standards puts U.S. carriers at a disadvantage in competing for traffic between the two countries.

- o FIRA is discriminatory on its face; however, most U.S. carriers applying for permission to make investments subject to FIRA review have been successful. There is some evidence that FIRA and its administration may deter new investment in the Canadian motor carrier industry by U.S. companies.

- o No evidence exists to indicate that U.S. carriers have been significantly harmed by the application of provincial regulations and FIRA.

The ICC stated that it would continue to monitor the U.S.-Canada trucking situation and take appropriate remedial action when and if it is necessary. See Attachment C for the complete text of the ICC decision.

Brock-Gotlieb Understanding. Following the imposition of the moratorium and its subsequent modification by the President as it applied to Canada, U.S. and Canadian officials met to work out an equitable resolution to the problems created by differences in the two countries' motor carrier regulatory regimes. Those discussions led in November to an exchange of letters between the Ambassador of Canada to the United States Allan Gotlieb and U.S. Trade Representative William Brock outlining an understanding on the subject of international trucking. That understanding commits both sides to:

- apply motor carrier regulatory policies in a non-discriminatory manner;

- provide full, fair and equitable opportunities for truckers of both countries to compete for international traffic;

- favor economic efficiency considerations in government investment policies affecting motor carrier operations; and

- give significant weight to the needs of shippers and consumers as a means of expediting trade through efficient and economical transportation.

See Attachments D and E for the full text of the letters.

Based on this understanding, on November 29, 1982, President Reagan determined that fair and equitable treatment had been gained for U.S. and Canadian trucking interests on both sides of the border. In accordance with section 6 of the Bus Regulatory Reform Act of 1982 the President found it in the national interest to lift fully the moratorium as it applied to Canada. See Attachment F for the full text of the Presidential Determination.

U.S.-Canada Motor Carrier Consultative Group.

The Brock-Gotlieb Understanding also called for the establishment of a consultative mechanism between the United States and Canada to help resolve problems associated with the implementation of the terms of the Understanding as well as other motor carrier issues. The inaugural session of the U.S.-Canada Motor Carrier Consultative Group was held at the U.S. Department of Transportation on March 18, 1983, to discuss a wide range of subjects of mutual interest to both countries. See Attachments G and H for the meeting agenda and summary.

The Consultative Group will serve as an "early warning system" to alert U.S. and Canadian officials about changes in policies, regulations and practices that might affect the operations or competitive opportunities of the other country's motor carriers. It will also serve as a means of developing and exchanging data, particularly with respect to the disposition of motor carrier applications and changes in the balance of trade in trucking service. Working groups on data and taxation and vehicle registration were formed to look into specific issues.

SUMMARY OF ACTIVITIES RELATING TO MEXICO (See Attachment J)

Consultations. Over the past two years, consultations between U.S. and Mexican officials, under the auspices of the U.S.-Mexico Joint Commission on Commerce and Trade, have failed to gain greater access to Mexico for U.S. motor carriers. The last series of meetings on trucking took place in Washington on July 8 and 9, 1982, before the imposition of the moratorium. (See Attachment K for the report on the meeting.) The change in administrations in Mexico, coupled with that country's financial difficulties and economic restructuring, have diverted attention from international trucking issues. U.S. Embassy staff has recently approached the Mexican Government in efforts to schedule an additional round of consultations on U.S.-Mexico trucking. To date, no new discussions have been scheduled. The moratorium on new grants of ICC operating authority to Mexican motor carriers remains in full force.

Enforcement Activities. Since the imposition of the moratorium the ICC has required all applicants for operating authority to indicate whether they are owned or controlled by Mexican citizens. No new grants of U.S. operating authority have been made to Mexican motor carriers since that time. Compliance checks were made at several California and Arizona crossing points in April 1983 as a part of a combined DOT, ICC and Customs motor carrier enforcement effort, as described below.

In response to complaints about widespread illegal Mexican trucking operations in California, the ICC assigned a Spanish speaking investigator to the San Diego area in September 1982. Since that time, periodic road checks have been made along the length of the border. A total of 97 passenger carriers and 2482 property carriers have been checked, including those checked during the joint DOT-ICC-Customs effort in April. Eleven passenger vehicles and 117 property vehicles were suspected of engaging in unlawful operations. Of these, five passenger vehicle investigations and six property vehicle investigations have been completed and are under review for legal action. Another case is pending. Warning letters have been issued in the remaining cases.

In connection with the moratorium and the new requirement that proof of financial responsibility be carried in the vehicle DOT, ICC, and Customs officials cooperated in a series of motor carrier checks at San Ysidro and Calexico, California, and Nogales, Arizona, during the week of April 25, 1983. The objectives of the checks were to assure that:

-- Mexican motor carriers maintain adequate insurance coverage on each vehicle operated in the United States;

-- Mexican trucks entering the United States comply with U.S. safety regulations;

-- the moratorium on new grants of ICC operating authority to Mexican motor carriers is not being thwarted by illegal operations; and

-- Customs inspectors have an opportunity to work first hand with DOT and ICC field staff.

During three days of checks approximately 1900 vehicles entered the United States through the commercial gates of the three crossing points. Most vehicles were not required to meet U.S. financial responsibility requirements (e.g. were private carriers or operated vehicles less than 10,000 pounds GVWR). A total of 101 vehicles were denied entry to the United States for failure to comply with financial responsibility requirements. The ICC detected 20 instances of motor carriers operating without the proper authority. (See Attachment L for a summary report on these checks.)

Additional checks were scheduled to be conducted in Brownsville, Hidalgo, Laredo, and El Paso, Texas, during the week of May 2, 1983. Arguing that irreparable harm would result if trucks carrying their products were turned back at the border, parties involved in the distribution of fruits and vegetables through the port of Hidalgo sought and were granted a temporary restraining order in the United States District Court for the Southern District of Texas, preventing the full enforcement of relevant DOT insurance regulations. (See Attachment M.) Based on this action and additional concerns raised by local officials and business community spokespersons, all checks along the Texas border for compliance with the financial responsibility requirements were postponed. A set of stipulations agreed to by the U.S. Government and the plaintiffs in this case, enables the plaintiffs to meet fully the financial responsibility requirements in as economical and administratively unburdensome manner as possible. (See Attachment N.)

FUTURE ACTIVITIES

Canada. Through the Consultative Group established under the Brock-Gotlieb Understanding, U.S. officials will continue to monitor periodically the status of applications by U.S. truckers for Canadian provincial motor carrier operating authority. A working group has been established within the Consultative Group to collect information in this area. Another working group will analyze issues associated with taxation and registration of motor carriers engaged in U.S.-Canada operations. A second meeting of the full Consultative Group is tentatively scheduled for December 1983.

At the end of April, the Ontario Highway Transport Board began an investigation of the potential effects of increased U.S. motor carrier operations on the provincial trucking industry and business community. The Board is scheduled to complete its investigation by July 31, 1983, at which time the results will be

presented to the Consultative Group. The U.S. side will review the Board's findings at that time and decide whether any action is warranted.

Mexico. Efforts to schedule a meeting of the Transportation Working Group of the U.S.-Mexico Joint Commission on Commerce and Trade will continue. A principal agenda item for any meeting of the Transportation Working Group would be discussions about improving the access of U.S. motor carriers to Mexico. In the absence of significant progress in this area, the moratorium on grants of new U.S. operating authority to Mexican motor carriers will continue in full force.

Periodic checks at border crossing points will be held to enforce the new proof of financial responsibility requirements. Training that will permit Customs inspectors to assist more fully in enforcement activities is being scheduled. Resolution of the problems that led to the imposition of a temporary restraining order in Hidalgo, Texas, will permit full enforcement of financial responsibility requirements along this part of the border.

Attachment A
President's Modification of the Moratorium as it Applies to Canada

Bus Regulatory Reform Act of 1982

Memorandum From the President.
September 20, 1982

Memorandum for the United States Trade Representative

Subject: Determination under the Bus Regulatory Reform Act of 1982

The Bus Regulatory Reform Act of 1982 addresses in Section 6 the issue of transborder trucking. It imposes a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. I am authorized to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. I must also provide written notice to the Congress of such removal or modification before it becomes effective. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof which substantially prohibits the granting of motor carrier authority to persons from the United States. I hereby determine that this sixty-day advance notification provision is not now applicable to Canada.

The transborder trucking issue has been the subject of extensive discussions between the United States and Canada and between the United States and Mexico. Because of the importance of fair and open competition in this important service sector, I am today instructing you, as my Trade Representative, to intensify our efforts to negotiate a fair and equitable resolution of this issue with both Canada and Mexico.

I regret that with respect to Mexico there has not yet been progress sufficient to justify a modification of the moratorium. A substantial disparity remains between the relatively open access afforded Mexican trucking service coming into the United States and the almost complete inability of United States trucking interests to provide service into Mexico.

In the case of Canada, our trucking industry is not now, nor has it been, precluded from providing services into that country. However, our regulatory schemes do now differ. Since the United States deregulation legislation, Canadian trucking interests could have an opportunity to provide single-line service into the United States more easily than their United States counterparts can provide into Canada. In addition, United States firms seeking to become established in Canada may be subjected to investment restrictions not facing their Canadian competitors.

I believe that our national interest is best served by fair and equitable competition between United States and Canadian trucking interests in our two markets.

Therefore, under my authority to remove in whole or in part the moratorium imposed in Section 6 of the Bus Regulatory Reform Act which prohibits issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country, I hereby find that it is in the national interest to modify the moratorium by suspending it insofar as Canada is concerned as set forth below.

Accordingly, you are directed to notify the Congress today on my behalf that, effective tomorrow: (1) The moratorium for Canada is suspended insofar as necessary to permit the Interstate Commerce Commission (ICC) to grant authority to motor carriers under the appropriate sections of 49 U.S.C. subtitle IV. This suspension is expressly conditioned upon the Commission, in making determinations on whether the proposed transportation serves a "useful public purpose" or is in the "public interest," according great weight to the national transportation policy, particularly the mandates to promote "economical and efficient transportation," and "to encourage sound economic conditions in transportation including sound economic conditions among carriers." Such determinations by the Commission shall be consistent with the directives of the United States Trade Representative concerning the international trade policy of the United States; (2) The moratorium in regard to Canadian applicants is further modified by suspending it to permit the ICC to issue temporary and emergency temporary authority, and to issue certificates in motor carrier merger, consolidation, and acquisition of control proceedings, and motor carrier restriction removal proceedings; (3) The moratorium is further modified by suspending it insofar as issuance of ICC authorities to Canadian carriers for domestic traffic in the United States under the appropriate sections of 49 U.S.C. subtitle IV is concerned. Canadian-owned, controlled, or domiciled firms will be able to apply for and receive ICC authority for operations wholly within the United States.

Finally, having directed you to seek an understanding with Canada that will ensure the fair and equitable treatment of both Canadian and United States trucking interests on both sides of the border, I further direct you to report back to me within sixty days on those discussions. It is my expectation that such time should be sufficient for an appropriate understanding to allow me to finally remove the moratorium.

This determination shall be published in the *Federal Register*.

Ronald Reagan

[*Filed with the Office of the Federal Register, 5:10 p.m., September 20, 1982*]

Attachment B
Chronology of Events — U.S.-Canada Trucking

U.S.-Canada Trucking

Chronology of Events

July 17, 1981	Secretary Lewis meets Minister of Transport (MOT) Pepin, Ottawa. Identifies U.S.-Canada trucking as a serious issue.
October 29, 1981	ICC Division 2 refuses to consider issue of reciprocity in application of TNT Canada for 8-state authority.
November 12, 1981	DOT officials meet with MOT officials to discuss major transport issues, Ottawa. U.S.-Canada trucking is on the agenda.
November 12, 1981	USTR Brock writes ICC Chairman Taylor, urging the Commission to consider reciprocity when deciding on grants of authority to Canadian applicants.
January 11, 1982	Secretary Lewis briefs Trade Policy Committee on status of U.S.-Canada trucking issue.
February 22, 1982	ICC initiates investigation of Canadian motor carrier regulatory policies as they effect U.S. carriers, Ex Parte No. MC-157; pending applications by Canadian motor carriers for U.S. authority held in abeyance.
March 4, 1982	DOT, DOS, DOC officials meet with Canadian federal and provincial officials in Ottawa to brief them on status of ICC and legislative actions and to gather information on Canadian motor carrier regulatory policies and practices.
May 25, 1982	Secretary Lewis meets with representatives of the U.S. trucking industry. Industry advised to pursue remedies under sections 305 and 301 of the Trade Act of 1974.
June 16, 1982	ICC delays for 30 days decision on pending applications from Canadian motor carriers.
September 20, 1982	Bus Regulatory Reform Act signed into law. Section 6(g) imposes 2-year moratorium on new grants of ICC operating authority to Canadian owned or controlled motor carriers.
September 20, 1982	President Reagan, citing fact that Canadian Provinces do not discriminate against U.S. motor carrier applicants, modifies moratorium

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	as it applies to Canada, in effect limiting it to apply only to new grants of authority for rights to carry international traffic.
October 8, 1982	ICC issues decision on Ex Parte No. MC-157.
October-November 1982	Periodic meetings held between U.S. and Canadian officials in effort to reach equitable resolution of international trucking issues.
November 17 & 24, 1982	Ambassador Brock and Ambassador Gotlieb exchange letters outlining a five-point understanding on U.S.-Canada trucking.
November 29, 1982	President Reagan lifts fully the moratorium as it applies to Canadian motor carriers.
January 6, 1983	Surface Transportation Assistance Act of 1982 signed into law. Section 406(b) requires most for-hire motor carriers and some private motor carriers domiciled in Canada to carry on board each vehicle operated in the United States proof of financial responsibility.
March 18, 1983	U.S. Department of Transportation hosts inaugural session of the U.S.-Canada Motor Carrier Consultative Group. Working groups on data and taxation and vehicle registration are established.
April 1983	Ontario Highway Transport Board begins investigation of the potential effects of increased U.S. motor carrier operations on the provincial trucking industry and business community.

Attachment C
ICC Decision in Ex Parte No. MC-157

SERVICE DATE
OCT. 18 1982

BC

INTERSTATE COMMERCE COMMISSION

EX PARTE NO. MC-157

INVESTIGATION INTO CANADIAN LAW AND POLICY REGARDING APPLICATIONS OF AMERICAN MOTOR CARRIERS FOR CANADIAN OPERATING AUTHORITY

Decided: October 6, 1982.

This decision finds that: (1) It is within the Commission's mandate to consider the issue of Canadian reciprocity for American motor carriers in deciding applications of Canadian motor carriers for operating rights in the United States. (2) Canadian provincial motor carrier licensing laws, although more restrictive than those of the Motor Carrier Act of 1980, are applied non-discriminatorily to American and Canadian applicants. Nevertheless, the disparity in United States and Canadian entry standards puts American carriers at a disadvantage in competing for freight moving between the two countries. (3) The Canadian Foreign Investment Review Act (FIR Act) is discriminatory on its face. The requirements for approval of applications filed under the FIR Act are far from clear or explicit; however, American motor carriers with investments subject to the review process have been mostly successful. There is some evidence that the FIR Act and its administration may act as a deterrent to new investment by American companies in the Canadian motor carrier industry or establishment of a new business presence in Canada. (4) The investigation did not establish that American carriers have been significantly harmed by the application of these laws to them in Canada. (5) The Commission will continue to monitor the situation and will take appropriate remedial action when and if it finds such action to be necessary.

J. Michael Alexander, Mark J. Andrews, B. Carleton Bailey, Jr., Walter N. Bieneman, Robert D. Shuler, Charles Ephraim, Richard Bogue, Mel F. Booker, Jr., Robert Cope, William H. Shawn, Donald E. Cross, Michael B. Crutcher, Rex Eames, Stephen F. Grinnell, Lester R. Gutman, Wilmer B. Hill, Jeremy Kahn, Owen B. Katzman, Dwight L. Koerber, Jr., Grant J. Merritt, Michael E. Miller, John M. Sims, Jr., Richard H. Streeter, William O. Turney, Robyn Lipton, Kenneth R. Nelson, Anthony P. Carr, Thomas E. Vandenberg, Michael Ermberg, John Banner, James M. Doherty, Elmer J. Maue, E.Stephen Heisley and Neill T. Riddel for individual motor carriers.

Alan J. Thieman, Nelson J. Cooney, Kevin M. Williams, Robert B. Warren, Jack Knebel, and Stanley Hamilton for associations of motor carriers.

Jean C. Godwin and Paul Donovan for the North Atlantic Ports Association.

Richard A. Lidinsky, Jr., for the Maryland Port Administration.

Daniel S. Linhardt and Stanley M. Braverman for the Office of Compliance and Consumer Assistance, Interstate Commerce Commission.

DECISION

BY THE COMMISSION:

This proceeding was instituted by notice served on February 11, 1982, and published at 47 Fed. Reg. 7778 (February, 1982). The stated purpose of the investigation was to determine

whether existing Canadian law and policy effectively discriminate against United States motor carriers, precluding their participation in the single-line transportation of international general commodity freight. Three specific areas of inquiry were outlined: (1) May the Commission legally consider Canadian government treatment of American motor carriers in deciding applications of Canadian motor carriers for American operating rights? (2) What is the effect (if any) of the Canadian Foreign Investment Review Act (FIR Act) and its administration by the Foreign Investment Review Agency (FIRA) as applied to American motor carriers? Also, at the Provincial level, are the licensing standards applied to American applicants for motor carrier operating authority different from those applied to Canadian applicants for similar authority? (3) Finally, what are the Commission's options if it should be established that Canadian law or practice discriminates against American motor carrier applicants. The notice required that anyone intending to participate in the investigation so notify the Commission and submit a verified statement. On March 29, 1982, we issued a clarification of the February 11 notice, explaining that issues of "licensing parity" or "reciprocity would be proper areas for parties to address, and indicating that argument relating thereto would be acceptable. In order to expedite consideration of these matters by the entire Commission, the requirement of an initial decision has been waived pursuant to 49 U.S.C. §10322(c).

Subsequent to receipt of verified statements in response to the notice, a pre-hearing conference was held on March 31, 1982. At this meeting the Administrative Law Judge and the parties agreed to a hearing schedule[1/] and established ground rules for the conduct of the hearings. The Administrative Law Judge determined that verified statements and sworn oral testimony would be the only materials accorded the status of direct evidence. Any such testimony was to be made subject to cross-examination to the extent requested by parties with opposing viewpoints.[2/] The testimony received at the hearing is summarized in Appendix I. Persons offering comment at the hearing, but not filing verified statements or giving sworn testimony are noted in Appendix II. Parties filing post-hearing briefs are identified in Appendix III.

We have made one exception to the ground rules described above. On May 20, 1982, after the close of the record in this proceeding, the Commission received a lengthy document through the United States Department of State from the Canadian government, Department of External Affairs. The document is identified as Note No. ONT-314 and is dated at Ottawa, May 19, 1982. The document is unsigned and unverified; nevertheless, it appears to be an official communication through diplomatic channels and is entitled to consideration on that basis. We will treat the material as a statement of position and as argument.

1/ Hearings were scheduled for Washington, DC; Detroit, MI; Seattle, WA; Minneapolis, MN; and, Buffalo, NY.

2/ We should make clear at the outset that this investigation was conceived purely as a non-adversarial fact-finding procedure. Because several Canadian motor carrier participants have applications for operating authority pending before the Commission, the Administrative Law Judge endeavored to provide for procedural safeguards in the compilation of this record. We are cognizant of the reasons for the procedures employed and will try to follow them to the extent possible to assure fairness and the accuracy of the record.

Portions of the data supplied corroborate other matter already in the record and will be treated accordingly. Certain material, particularly relating to off-record discussions between Canadian and American officials, and characterizations of American motor carrier law and policy, will be disregarded. References to the involved document appear at various points in this report as the opinion of the Canadian government.

CANADIAN LICENSE MORATORIUM

Subsequent to the close of the evidentiary record in this proceeding, Congress enacted the Bus Regulatory Reform Act of 1982, P.L. No. 97-261, _____ Stat. _____ (September 20, 1982). Section 6(g) of the Bus Act imposes a moratorium on the Commission's issuance of certificates or permits to those carriers domiciled in Canada or Mexico or owned or controlled by Canadians or Mexicans. This provision does not moot the instant investigation. Section 6(g) empowers the President to remove or modify in whole or in part the moratorium if he determines that such removal or modification is in the national interest. The President has decided to lift partially the moratorium as to some classes of Canadian applications and to modify the moratorium as to other classes of Canadian applications.3/ The President indicated that he may lift in total the moratorium as to Canadians in approximately 60 days. In these circumstances, our investigation remains relevant. It will provide information which will aid us in the resolution of specific cases. Moreover, our investigation will aid the President and the United States Trade Representative in their negotiations with Canadian authorities over the Canadian trade reciprocity issue.

BACKGROUND OF THE INVESTIGATION

Until recent liberalization of the requirements for obtaining motor carrier operating authority from the Interstate Commerce Commission (culminating in passage of the Motor Carrier Act of 1980), the regulatory situations in the United States and Canada were roughly complementary. Similarity of entry control resulted in a rather highly developed interline network which facilitated the international movement of freight between the two countries. Historically, a number of carriers have held authority and have operated across the International Boundary line, but the bulk of international freight (somewhat in excess of 80 percent) had been transported in joint-line service with American and Canadian motor carriers performing the geographical segment of the move within their respective countries. Revenue generated from traffic between the two countries has been estimated at approximately $1 billion annually, with the revenue to American motor carriers reaching the hundreds of millions of dollars.

It is argued that with the passage of the Motor Carrier Act, a significant change occurred which threatens to alter substantially the balance of international operations by eliminating more and more American carriers from the estabished interline network. For the first time, Canadian carriers are obtaining broad grants of authority to operate in the United States. These carriers have begun to conduct new single-line operations, diverting traffic formerly handled in joint-line service with American carriers. It is further argued that United States carriers will not be able to compete for this traffic with their own single-line operations because restrictive entry regulations in the Canadian Provinces prevent them from reasonably obtaining new authority and limit the scope of any such authority once granted. The situation is allegedly exacerbated to the extent

3/ See Appendix VI.

that the additional regulatory hurdle of the FIR Act must be cleared. It is feared that, ultimately, United States carriers will lose market shares which represent important revenues critical to their survival.

These assertions as well as the other issues discussed in the notice have been raised in many pending applications of Canadian motor carriers. Before dealing with the specific assertions in individual cases, we have decided to take a hard look at the broad picture, choosing this forum to accord all interests an opportunity to air fully their views and to explore fully the facts.

PRELIMINARY MATTERS

Motions to dismiss this proceeding have been filed on behalf of Provost Cartage, Inc., and Transx, Ltd., jointly, and Frederick Transport Limited, individually. The motions are based primarily on assertions that the Commission has no jurisdiction to consider the issues raised here in connection with motor carrier licensing decisions. We have discussed these jurisdictional concerns at length below in connection with similar arguments of other respondents, and for the reasons given there, the motions are denied.

In their post-hearing brief, the American Trucking Associations and the named carriers request oral argument. The record is already complete and we can see nothing to be added by additional argument. The request is denied.

Adequacy of the notice of the scope of this investigation has been questioned by some parties. They argue that our February 11, 1982, notice instituting the investigation limits the proceeding to consideration of whether Canadian laws or policies treat American carriers differently from their Canadian counterparts. Under this view, evidence relating to broader concerns is improper and should be excluded, as parties relying on the published notice may not have been sufficiently apprised of the allegedly more expansive range of the proceeding.

We disagree that our published notices limited our inquiry so narrowly. Our intent, as expressed in the February 11 notice, was to examine areas of "discrimination" and we requested that parties address the issue of "reciprocity". Our March 29 notice indicated that "licensing parity" and "reciprocity" were pertinent to our consideration. Discrimination and reciprocity, moreover, are themselves broad terms. Discrimination is commonly considered to include the effect or impact of particular policies or laws, and is not limited merely to a question of disparate treatment. Several narrow definitions of reciprocity are advanced by various parties, but we use the term in the sense of a general concept of fair competitive opportunities for American motor carriers in foreign countries and believe that our notices fairly communicated to potentially interested persons the broad range of matters to be addressed. Insofar as our investigation is concerned, these concepts are relevant only as they affect transportation in the United States.

Questions have also been raised with respect to the participation of the Commission's Office of Compliance and Consumer Assistance (OCCA) in this proceeding. During the course of the hearings and on brief, various parties have either attributed improper motives to OCCA or argued that its methods have somehow prejudiced their interests. These charges are wholly without merit. At the outset of the investigation the Commission recognized the potential difficulties involved in conducting a

proceeding of this nature, including the need to examine unfamiliar foreign laws and procedures. Furthermore, because the proceeding was to be non-adversarial, so that no party would have a particular burden of proof, the possibility of serious evidentary gaps existed. Accordingly, the Commission's February 11 notice directed OCCA to participate as a neutral party to develop the record. That is what OCCA has done.

With the exception of a former FIRA official, the witnesses presented by OCCA were American firms which had had experience with the FIR Act and the FIRA process. To obtain their presence at the hearing, OCCA had to subpoena the witnesses and documents relating to their FIRA applications. Throughout the course of the proceeding, OCCA explained the difficulty of its position in the hearing. First it had to locate potential witnesses whose testimony might be of benefit in completing the record; second, it had to determine the availability or relevance of any documentary evidence these witnesses might have; and third, it had to secure their presence through the subpoena process. OCCA stated that it identified witnesses and furnished copies of documentary material to interested parties as soon as practical after the became available. The subpoened witness testified that all documentary material deleted from that which they had submitted related to what was called competitively sensitive material not relevant or necessary for the purposes of this investigation. Parties were given opportunity to cross-examine witnesses. In sum, OCCA carefully and diligently performed its delegated function of developing the record. The evidence demonstrates that OCCA acted fairly toward all the parties involved in this proceeding.

Finally, several Canadian motor carrier parties indicate that the Commission has reopened their application proceedings pending the Commission's findings in this proceeding. They argue that this constitutes improper "flagging" of their applications, and they request that certificates be issued immediately. This issue is not directly involved in this investigation proceeding, and we will not consider the question here.

THE CANADIAN GOVERNMENT POSITION

Canada indicates that it maintains, or has been able to obtain, little statistical information regarding international trucking operations, which information it believes reflects the nature of the industry and the alleged fact that Canadian motor carrier regulators have not taken cognizance of the nationality of applicants for operating authority. Nevertheless, from information it has obtained from provincial and federal authorities, it takes the position that the Canadian provincial and federal governments do not as a matter of policy accord unfair treatment to United States carriers seriously interested in doing business in Canada. It points out that even now a large number of American carriers are entering or expanding their Canadian operations.

Canada views the United States transportation network as a vast and complex grid with a large number of population centers spread reasonably uniformly across it. In contrast, it portrays the Canadian transportation network as a series of points or regions stretched along a narrow ribbon at the northern extremes of the United States grid. Because they operate from nearer the center of this grid, American motor carriers purportedly have had a natural advantage in international truck transportation.

It is alleged that through ownership of Canadian subsidiaries United States motor carriers have penentrated and now dominate the Canadian transportation market. Although it con-

American partners. However, it would assertedly attempt to maintain its joint-line arrangements as much as possible and develop new markets for its single-line service.

• Central Transport, Inc., et al; James D. Payne.

Central contends that even prior to enactment of the Motor Carrier Act of 1980, it was easier for foreign-domiciled carriers to obtain authority in the United States than for American carriers to obtain authority in Ontario. This difficulty coupled with perceived FIRA requirements acts as a deterrent to American efforts to obtain authority in Canada.

• Ace Doran Hauling & Rigging Co.; Norbert J. Doran.

Holding no permanent Canadian authority, Ace Doran must make various arrangements (including interchanges involving load transfers, tractor exchanges or trip permits) in order to provide its customers with service to and from Canadian points. It complains that economical and expeditious service cannot be provided under these circumstances. Apparently, it has never sought Canadian operation authority.

White Stat Trucking, Inc.; Frederick Berkororty.
United Trucking Service, Inc.; Lavergne L. Adsit.
Alvan Motor Freight, Inc.; C.J. Koster.
Short Freight Lines, Inc.; Richard L. Poirier.
Earl C. Smith, Inc.; Leo Shimsky.

Smith, like many of the immediately preceding listed American carriers has lost joint-line traffic since the issuance of American operating rights to its interline partners. It believes that Smith cannot remain competitive in the trucking industry to and from Canada unless it is "afforded an equal opportunity" to obtain Canadian operating rights.

Holland Motor Express, Inc.; Kenneth DeVries.

Holland stands to lose about $650,000 in annual revenue if four Canadian carrier applications now pending before the Commission are granted and these carriers then curtail their existing interlines with Holland. This traffic accounts for 10 percent of its Detroit terminal traffic and the loss would result in layoff of some personnel at this facility.

• Lynden Transport, Inc.; Henry Forman.

In 1976, Lynden entered into negotiations to purchase an Alberta trucking company, Frickers Truck Service Ltd. After a thorough investigation of Fricker's operations and the validity of its operating authority (including "assurances" by the Alberta Motor Transport Board that Fricker's was "in good standing"), Lynden agreed to purchase Frickers for $200,000. The purchase received the required approval of all interested Canadian agencies, including FIRA. Lynden agreed to several undertakings in its application before FIRA, including promises to (1) lease larger premises, (2) retain Ficker's present employees, (3) endeavor to expand Ficker's business, (4) employ Canadians in any expansion of Ficker's business, (5) purchase $500,000 worth of capital equipment from Canadian suppliers during the first five years of ownership, (6) provide Fricker's with adequate capital to carry out purchase and expansions, (7) retain Frickers' present President/Director and employ a specified Canadian citizen as General Manager, and (8) issue, within five years of pruchase, shares in Fricker's to Canadian buyers, provided Canadian financial advisors confirm that a market exists

Canada poses several questions which it believes deserve serious consideration before the United States acts to correct any perceived discrimination or negative impact from differences in motor carrier regulation between the two nations: (1) How great is the practical as opposed to the theoretical differences between the Canadian and American regulatory systems?; (2) Will there be such a large influx of Canadian carriers into the United States under deregulation as to pose a serious threat to United States motor carriers?; (3) Does single-line service have such an advantage for all commodities that it will in all places displace interline? Finally, it suggests that any action taken by the United States to redress alleged traffic imbalances, perceived as discriminatory against Canadian carriers, could generate considerable pressure for retaliation, and inhibit discussion within Canada of reducing regulations on international trucking.

JURISDICTION TO CONSIDER RECIPROCITY

The initiation of this investigation raises a basic question as to the authority delegated to the Commission in the Motor Carrier Act of 1980. Does the Act authorize the Commission to consider the impact of Canadian law and policy on American motor carrier applicants in deciding applications of Canadian motor carriers for American operating rights? The views of the various parties addressing the question divide roughly along whether the party is a United States or Canadian domiciliary.

Those arguing against a finding of jurisdiction point out quite correctly that the Motor Carrier Act of 1980 does not expressly confer jurisdiction upon the Commission to take reciprocity considerations into account in applications for motor carrier operating rights, and they argue that the admittedly broad powers to regulate motor carrier transportation in interstate or foreign commerce cannot properly be used to imply such jurisdiction. They contend further that when Congress intends to give regulatory agencies power to deal with perceived anti-competitive practices of foreign countries, it does so in clear and specific terms. In support of this proposition they point to section 9 of the International Air Transportation Competition Act which directs the Civil Aeronautics Board to take action when it finds that the actions of a foreign country or carriers adversely affect the operating rights or competitive position of American air carriers. See 49 U.S.C. §§1371 and 1372. The silence of Congress in the Motor Carrier Act is allegedly a strong indication that it did not intend to confer similar power on this Commission. Furthermore, the fact that Congress provided for different treatment for foreign and domestic carriers in the incidental-to-air exemption in the Motor Carrier Act (49 U.S.C. §10526(a)(8)(B)) is also advanced for the idea that Congress intended like treatment for foreign and domestic carriers in the absence of specific indication to the contrary. Finally, respondents aver that any action by the Commission here would be an unwarranted intrusion into an area reserved for the executive branch of government under the Trade Agreements Act of 1979, as pertinent, 19 U.S.C. §2411.

In the final analysis, we find this line of reasoning unpersuasive and conclude that matters relating to Canadian reciprocity are proper considerations of the Commission as part of its motor carrier licensing duties. To avoid any potential confusion, we stress that they are within the jurisdiction of the Commission only as they effect or relate to transportation services and competition on the United States side of the International Boundary line. In deciding applications for motor carrier operating authority the statute directs the Commission to make an assessment regarding the public convenience and necessity. 49

U.S.C. §10922(b)(1),(3). Although this term is not defined, the Supreme Court found nearly 40 years ago that the statute "... gives administrative discretion to the Commission ... to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945). The Commission has in fact addressed a myriad of issues pertaining to the surface transportation system of the United States either on a case by case basis or through rulemaking procedures. It has done so on its own motion or at the instigation of interested persons or groups. We believe that the term "public convenience and necessity" is sufficiently broad to enable the Commission to consider whether law or policies of the Canadian government have an anti-competitive or discriminatory impact on the United States motor carrier industry.

Among the factors the Commission is to consider in motor carrier licensing are (1) the National Transportation Policy (set forth at 49 U.S.C. §10101(a)), and (2) the effect of issuance of a certificate on existing carriers. 49 U.S.C. §§10922(b)(2)(A) and (B). Whether Canadian law or policies result in a negative impact on the health of individual American motor carriers or the American motor carrier industry as a whole appears to be a relevant concern under these sections. The National Transportation Policy declares that it is the policy of the United States to provide for impartial regulation of the various modes of transportation and to promote economical, efficient and competitive transportation and sound economic conditions among carriers. Failure to consider evidence of a lack of reciprocity would potentially result in a situation in which only Canadian motor carriers would be licensed to provide a through, international service. Thus, an impartial policy by the United States could give an unfair advantage to Canadian carriers because of differences in transportation policies between the two countries. United States carriers would be placed at a disadvantage in obtaining international traffic to the detriment of the competitive environment in the United States and international motor carrier market.

The Commission has long asserted the power to consider "the transportation situation in a foreign country in determining whether [U.S.] authority should be granted, or is necessary." Consolidated Truck Lines, Ltd. v. Graydon F. & W Trucking Co., Inc., 83 M.C.C. 673, 676 (1960). To determine whether new operating authority is needed, the Commission may look at the "overall substance" of a service proposal, or "the entire picture," including the foreign portion of the movement. Provost Cartage, Inc., Petition to Remove Quebec Restriction, 129 M.C.C. 477, 479 (1978); St. Basile Transport, Inc., Common Carrier Application, 69 M.C.C. 711, 713 (1957). We believe that Congress did not include specific reciprocity language in the statute because it perceived no need to do so in view of the relative regulatory balance between the United States and Canada prior to 1980, and the Commission's longstanding policies regarding jurisdiction over international traffic.

The courts have recognized that the Commission may regulate in the absence of express statutory authority so long as the regulations are reasonably designed to carry out the overall purposes of the Act. Global Van Lines, Inc. v. I.C.C. 627 F.2d 546, 550 (D.C. Cir. 1980); American Trucking Association v. United States, 344 U.S. 298, 309 (1953). The Motor Carrier Act, itself, provides at 49 U.S.C. §10321(a):

> Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carrying out this subtitle.

Moreover, unlike those arguing against the Commission's jurisdiction, we find that Congressional reference to reciprocity in the 1980 Act's expansion of the incidental-to-air exemption evidenced its concern with the need for equal treatment of United States carriers by foreign transportation authorities.

We find no merit in contentions that in considering reciprocity matters the Commission would be encroaching upon the President's power to conduct foreign affairs. The Motor Carrier Act expressly authorizes the Commission to regulate motor carrier transportation between the United States and a foreign country to the extent the transportation takes place within the United States. 49 U.S.C. §10521(a)(1)(E). That is precisely what the Commission is considering here.

Finally, Congress has affirmed that the Commission has authority to consider reciprocity under existing legislation. The Conference Report on the Bus Regulatory Reform Act states (H.R. Rept. No. 97-780, 97th Cong., 2nd Sess. 39 (1982)):

> Finally, it is the judgment of the Conference that notwithstanding the existence of a prohibition imposed under this Act, the ICC has the authority to deny operating rights or the easing of any circumstance related to operating rights, to any carrier from any contiguous foreign country or political subdivision thereof which discriminates against or prohibits entry by U.S. operators. This authority may clearly be traced back to any of the number of sections of title 49, U.S.C..; section 10101, section 10321(a), section 10521(a)(1)(E), and section 10922(b).

THE FOREIGN INVESTMENT REVIEW ACT

The law and its administration: Under the Canadian Foreign Investment Review Act, a non-Canadian controlled corporation or a non-Canadian individual desiring to acquire control of an existing Canadian business or to establish a new business in Canada must receive the approval of the federal government of Canada. Approval is not required if the non-Canadian, (1) carries on its activities without establishing a location to which employees normally report for work,[5/] or (2) already operates a business in Canada and seeks to acquire control of a related business with gross assets of less than $250,000 and gross revenues of less than $3 million. Non-Canadians already operating businesses in Canada on the effective dates of various portions of the Act in 1974 and 1975 were not required to seek approval and were thus "grandfathered". "Grandfathered" businesses and those receiving government approval are generally not required to seek additional approval to expand those particular businesses. The FIRA administrative process is described in detail in Appendix IV.

Experience of American motor carriers before FIRA: Most motor carriers (primarily American) entering into Canadian business transactions falling within the purview of the FIR Act have been successful in their applications.[6/] Overall, in the 8 years in which the FIR Act has been in existence the Canadian

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[5/] In terms of motor carrier transportation, this exception would be most applicable to a firm not intending to operate a terminal in Canada. Thus, an American motor carrier engaging only in a pickup and delivery type operation without a Canadian terminal would not need approval under the FIR Act.

[6/] This subject is described further in Appendix V.

government has issued some 3,600 FIR Act decisions, 2,100 of which involved United States investors. Approximately 90 percent of the proposals have been allowed. Only 29 of the investment proposals involved motor carriers, and 24 of these were by Americans. Of the 24 applications, 20 were eventually approved. Two of the four denials involved the same company, United Parcel Service.7/ The Canadian government believes that the existence of the FIR Act has not proven to be a major obstacle or impediment to American investors seriously wishing to engage in business in Canada. Nevertheless, American carriers consider application before FIRA a costly and inequitable procedure which severely limits exercise of their business judgment and unreasonably restricts management discretion.

Several parties to this proceeding contend that, notwithstanding the high approval rate for FIRA applications, the existence of the FIR Act itself and the nature of the review process have served as a deterrent to potential expansion of American motor carrier operations into Canada or to the acquisition of Canadian trucking firms by Americans. They point to the small number of applications as convincing proof. A number of respondents have made assertions on the record that they were in fact discouraged from doing so by FIRA requirements.

We have no doubt that the FIR Act has had some impact on decisions of American firms with respect to Canadian investments of the nature covered by the Act. The Act and its review process may well serve as a significant impediment to such investment. Nevertheless, we are unable to assess with any confidence the real extent to which American carriers would have expanded into Canada except for their existence. It is clear that restrictive provincial policies, general economic conditions, and other matters must contribute as factors in the dearth of applications. In the end, we must find that the evidence on this record does not establish in any conclusive manner the existence of any substantial chilling effect.

PROVINCIAL MOTOR CARRIER ENTRY REGULATION

The laws and their application: The Canadian federal government has delegated the power to regulate motor carrier transportation to the Provinces. Accordingly, in Canada, there is no counterpart to the Interstate Commerce Commission on a national level. At present, the Canadian federal government's role is confined to assisting the development of cooperative and harmonious regulations among the various Provinces.

Each Province regulates the motor carrier transportation within the confines of its own borders. Transportation between Provinces, as well as between points in a Province and points on the United States-Canada International Boundary line, is also the concern of the various Provinces. In order to transport commodities between a point in one Province and a point in another Province, authority is required from both. For example, a carrier operating between Toronto, Ontario and Montreal, Quebec must have the approval of both Ontario and Quebec licensing authorities. Joint hearings involving both provinces are often held. A

7/ We note that several respondents believe that these figures are misleading, as they include applications which were initially denied, but subsequently approved upon a second filing with modified undertakings. Others believe that the apparent high success rate is tainted by the lack of success of the most ambitious proposals (e.g. I.U. International Corporation's attempted purchase of Canadian Motorways Ltd.).

carrier operating across a Province, even if it performs no pickup or delivery in the Province, must have what is known as "corridor" authority to traverse the Province. Thus, a motor carrier transporting a shipment from Edmonton, Alberta to Winnipeg, Manitoba requires corridor authority for the intervening Province of Saskatchewan, as well as from Alberta and Manitoba.

The Canadian government indicates that all Provinces control entry into interprovincial trucking, applying tests of public convenience and necessity which it likens to those applied by this Commission prior to 1980. All Provinces exert some degree of control over commodities, routes, origins, destinations, intermediate points, and frequency of service. Intraprovincial traffic is a different situation, with provincial regulatory schemes varying widely. Alberta, for example, has largely deregulated such traffic, while British Columbia controls the number of vehicles operated in the Province.

There is general agreement by all the parties to this proceeding that the Provinces do not intentionally discriminate against American motor carriers in favor of their Canadian counterparts. Statistical information provided by the Canadian government relative to grant and denial rates, broken down by carrier country of domicile, bears this out. Statistics for Quebec show a slightly higher denial rate for American carriers for a 1-year period from April 1, 1980 to March 31, 1981. Ontario statistics covering the 3-year period of 1979, 1980, and 1981, on the other hand, indicated a slightly lower denial rate for the American carriers. The data provided us is not broken down as to the kind of authority involved in the various grants or denials, and in the absence of an analysis of the substance of the application involved in these compilations, the figures should be weighed cautiously. Nevertheless, in conjunction with the near unanimous testimony regarding the fundamental fairness of provincial licensing practices, we consider this data as lending credence to the view that there is no intentional discrimination in the Provinces against U.S. motor carriers. We are confident that American carriers seeking to operate in the Canadian Provinces must satisfy the same standards of proof as Canadian carriers, no more and no less.

Another area of general agreement is that Canadian provincial licensing standards (especially those of the most populous provinces, Ontario and Quebec) are much more restrictive than those of the Commission under the Motor Carrier Act of 1980. Provincial burdens of proof of need for requested motor carrier service are generally higher than those applied by this Commission. Significantly, existing service of protestants (both American and Canadian) is often a preeminent consideration, while fostering of new competition is relatively less important or not considered at all. Protestants usually are required to show only that they hold authority similar to that requested and are willing to handle the involved traffic. In some Provinces (e.g. British Columbia and Newfoundland), applications are routinely denied if another carrier already holds conflicting authority, unless such carrier shows no interest in the traffic.

The high grant rates indicated by Canadian officials (upwards of 85 percent) reflect, at least in part, the fact that service proposals are narrowed considerably to conform to these stricter burdens of proof. There is evidence that, with one minor exception, no American motor carrier has been granted any general commodities authority involving less-than-truckload traffic from any Province since 1974. In a proceeding to which reference was made throughout this investigation, Yellow Freight

sought irregular-route general commodities authority in Ontario, a Province in which it was already operating. After several weeks of oral hearings involving the testmony of nearly 80 witnesses, the application was denied with little explanation. Although there was some debate on the record regarding the adequacy of Yellow's presentation, other evidence indicated that, in practice, Ontario does not grant general commodities authority in the broad terms requested by the applicant.

The facts that it is substantially easier for Canadian carriers to obtain United States operating authority than vice versa, and that Canadian operating rights authorizations are narrower in scope than those granted in the United States has a negative impact on American carrier participation in international transportation by placing them at a competitive disadvantage. American carriers have not been able to obtain the broad operating rights necessary for them to accomplish single-line service similar to that being instituted by a number of Canadian carriers.[8]/ Their existing joint-line arrangements are becoming increasingly difficult to maintain in this new environment. Several American carriers showed on this record that former interline service with Canadian carriers had terminated upon those carriers' obtaining United States authority of their own. They point out also that other Canadian carriers with which they perform joint-line operations have applied for similar authority and they fear further loss of traffic.

Effect on ability of American carriers to compete:

We are unprepared at this juncture to conclude that in either the long or short run the ability of Americans to compete in the international market will be adversely affected by the influx of Canadian applicants into the United States. As to the short run, the weight of the evidence of record is that American carriers are not yet experiencing substantial problems. The traffic subject to diversion by newly authorized Canadian carriers is still a small percentage of the total traffic volume handled by most American carriers. This is in contrast to the Canadian situation, where international freight is represented to be a much larger proportion of overall business. American carriers still provide a tremendous volume of service between the two countries. It is contended by many Canadian respondents and by the Canadian federal government that American carriers dominate this traffic. There is considerable evidence of record that such dominance does exist and will continue in the future - at least in the short run.

As to the long run, we are sensitive to the argument that granting the pending applications by Canadian carriers, plus others that follow, could produce a large number of Canadian

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8/ Although the Canadian provinces treat United States and Canadian applicants alike, many Canadian carriers are at a competitive advantage in offering trans-border single-line service because they have already obtained geographically broad Canadian authority through past applications to the Canadian authorities (Provost Cartage Inc. and Dominion-Consolidated Truck Lines Limited are two examples of Canadian carriers with broad Canadian authority.). In view of the strict entry standards applicable in the Canadian Provinces, substantial numbers of United States carriers cannot obtain equivalent authority in the short run, and it is unclear how much authority they may obtain over a period of years. Accordingly, Canadian carriers with an existing network of Canadian routes enjoy an advantage in obtaining trans-border single-line authority.

carriers holding general commodity authority to provide international service from and to large portions of the United States. However, we are unwilling to conclude that granting of the pending applications will offset the dominance of American carriers in the trans-border transportation market. After all, a number of American carriers already compete in the single-line market (Three examples are Yellow Freight System, Inc., Ryder Truck Lines, Inc. and Rice Truck Lines).

Moreover, we are unable to discern a trend in the applications before us which would support the conclusion that, in the future, Canadians will capture the international transportation market. We have no doubt that both Canadians and Americans alike will continue to seek authority from both this Commission and Canada. But we have previously found that the Canadian Provinces treat Canadians and Americans without discrimination. New Canadian applicants have no advantage over their American counterparts. It is only an existing Canadian carrier who already holds authority in Canada that has a jump on its American competition when it seeks to enter the single-line market. But we are unable to conclude that there are significant numbers of carriers with extensive Canadian authority who will sooner or later apply for authority in the United States. The record contains no evidence to support this assumption. Even if such evidence existed, it is highly speculative whether such a carrier, once licensed, would be able to penetrate the market. Accordingly, we are unable to hold that Canadian carriers will be able to capture the trans-border market in the long run.

We are cognizant of the profound belief of such groups as the Teamsters Union (particularly from testimony heard in Buffalo, NY) that new Canadian competition is significantly responsible for the present unemployment problems for its members in the northern States. On the other hand, we recognize that the present general economic conditions are also a significant factor contributing to that situation.

In sum, we believe that the negative effects of the disparity in licensing standards between the United States and Canada are not at this time substantial.

CONCLUSIONS

The Foreign Investment Review Act is discriminatory on its face against United States motor carriers in that it compels American carriers (or Americans desiring to purchase Canadian motor carriers) to engage in a complex and potentially costly process not required of Canadians. Although the success rate for Americans who have filed applications is high, there is some evidence that it has been accomplished at a cost of inhibiting management discretion with a possible adverse affect on their ability to compete. There is also some evidence that the FIRA process acts as a deterrent to Americans desiring to engage in motor carrier operations in Canada.

However, we are not convinced that this process has proven to be a significant impediment to the conduct of international trade by American motor carriers. Many American carriers (those performing what can generally be described as an irregular-route truckload pickup and delivery service, as opposed to a regular-route, LTL, terminal to terminal operation) are exempt from its scope. Others, who have applied for FIR Act approval, have made proposals which, in the end, they believe were warranted by their overall interests. The high success rate appears indicative of this.

Provincial regulatory authorities do not discriminate against American motor carriers. Nevertheless, the differences in the regulatory requirements between the United States and Canada tend to place at least certain American carriers at a competitive disadvantage in the trans-border transportation market. However, we are unable to conclude at this juncture that this disparity in licensing standards will result in serious harm to American carriers generally in either the long or short term.

We conclude that action by the Commission is not warranted at this time. Neither the discriminatory effects of the FIR Act nor the recent stream of Canadian applications is as yet placing American motor carrier transportation in any dire peril, although some individual carriers may be affected more than others. Many factors may act to alter the present situation, and we cannot predict the longer range consequences of the matters discussed in this report. For example, although Canadian motor carriers are increasing their United States operations, their ability to make significant inroads on the American transportation market is still an open question. It is also entirely possible that the present situation is only a temporary phenomenon serving only to adjust what has been suggested by some to be a traffic imbalance favoring American motor carriers, and that no serious negative impact on American motor carrier transportation will occur. Future economic conditions will also affect the situation. On the other hand, should FIR Act requirements stiffen appreciably, or should the present stream of Canadian applicants become a flood, with concomitant loss of international traffic by American carriers, those future events or effects could aggravate transportation conditions to such a degree that we would assign this controlling weight in an individual licensing case.

Accordingly, we will discontinue this proceeding. We will process pending applications to the extent consistent with the statutory moratorium as modified by the President. However, we intend to monitor the trans-border transportation situation carefully. Although we will discontinue this proceeding, we will accept for filing verified statements which report the current competitive situation in the trans-border market. We will periodically review these submissions as well as the submissions in individual license application cases to see if further proceedings become necessary.9/

9/ We have received suggestions from several parties as to various courses of action open to the Commission. Most Canadian interests recommend that the Commission take no action. American interests generally urge that we take steps of a remedial nature. These latter proposals include refusing to issue any operating authority to Canadian motor carriers, holding oral hearings for Canadian applicants, applying the public convenience and necessity standard formerly used by the Commission in all motor carrier operating rights cases to all applications with international aspects, and various combinations of these concepts. One party believes that stricter enforcement of record-keeping requirements relative to tariffs and fuel surcharge payments should be a part of any answer.

Because there is no immediate need to do so, we will not address these proposals in any detail. We do note, however, that some of the recommendations are outside the scope of our statutory authority. Thus, we could not consider applying the criteria set forth in Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936) as has been urged. Nor could we deny Canadian motor carriers operating rights merely on the basis of their Canadian domicile alone. Still, we have concluded that the Commission has broad justification under the Motor Carrier Act of 1980 to consider anti-competitive effects on motor carrier transportation in the United States as part of its duties to assess the public convenience and necessity and implement the National Transportation Policy. We can consider options only on the basis of the statute and have no jurisdiction to go beyond that.

Ex Parte No. MC-157

It is ordered:

This proceeding, Ex Parte No. MC-157, is discontinued.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Simmons, Andre, and Gradison.

(SEAL)

Agatha L. Mergenovich
Secretary

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APPENDIX 1

SUMMARY OF VERIFIED STATEMENTS AND SWORN TESTIMONY

We have attempted to summarize briefly all the pertinent testimony in this voluminous record to the extent that it is factual and not cumulative. For the most part, once sufficient testimony has been recounted to fully air or establish a point, additional similar material will not be noted specifically. All submissions received into evidence will be noted here. Those witnesses who appeared for cross-examination are indicated with an asterisk.

Lesco Trucking Company, Inc.; C.B. Whittington.

Lesco, an American carrier, recently decided to seek authority to operate in international commerce throughout Canada. Beginning in August 1981, Lesco applied successfully to eight provincial transport boards. In most cases Lesco received broad authority complementing the compensated intercorporate hauling operations it recently initiated in the United States. Finally, Lesco was informed by the Canadian embassy that no FIRA approval of its operations was necessary.

Yellow Freight System, Inc., Stephen P. Murphy.

Yellow Freight has been participating in traffic moving to and from Canada for over 17 years. Prior to 1972, all of its business was on a joint-line basis involving interline at points near the Canadian border. Since 1972, it has performed some single-line service using purchased authority to serve Quebec and has maintained its interline operations. Yellow Freight fears diversion of its substantial joint-line revenue to single-line service if the broad general commodities applications of several Canadian carriers are ultimately granted by the Commission. It would seek to compete by applying for corresponding Canadian authority but, based on its experience, feels that such authority is difficult or impossible to obtain. One such application before the Ontario Highway Transport Board was denied in a perfunctory decision after protracted and costly oral hearing.

* Ryder Truck Lines, Inc.; S.E. Sommers, Jr.

In July 1979, Ryder filed an application with FIRA for approval of the purchase of a portion of Reliable Transport, Inc., a Canadian motor carrier. Subsequent to this filing, Ryder representatives had meetings with representatives of FIRA to develop possible amendments to its application which would lead to approval, i.e., to a finding that the proposal would be of significant benefit to Canada. It was perceived by Ryder that unless these undertakings were agreed to, its application would not be recommended for approval by FIRA. Ryder's initial attempts to formulate sufficient undertakings were unsuccessful. After a second meeting with FIRA officials a number of other changes were made in the proposal, including (1) establishment of a separate corporation in Canada instead of the initially envisioned branch typed operation, (2) a promise not to solicit Canadian domestic freight as vigorously as international business, and (3) a promise not to seek a new grant of authority to serve the highest volume traffic lane in Canada (Toronto-Montreal). Finally, although Ryder was told that an undertaking to provide for equity participation in the purchased company by Canadians was needed for approval, no such undertaking was made. Ryder's application ultimately was approved (on February 1, 1980). Ryder would not have agreed to a number of the undertakings except for its belief that approval depended on them.

This witness explained on cross-examination his understanding that FIRA merely recommends approval or disapproval of applications, while the Canadian federal Cabinet actually makes the decision in each proposal. Many of the undertakings finally

agreed to amounted to action that Ryder would take in the normal course of business. Included in this category are establishment of terminals in Canada and capital investment are establishment of terminals in Canada and capital investment of $500,000 during the first 24 months of operation. None of the undertakings agreed to by Ryder preclude it from competing vigorously for international traffic.

Motorways (1980) Limited; Paul J. Maley.

Motorways is a wholly-owned subsidiary of Canadian Motorways, Ltd., a Canadian holding company which is itself over 90 percent owned by a British conglomerate. As subsidiaries of a foreign corporation, Canadian Motorways, Ltd., and each of its operating companies are subject to the FIR Act. Motorways believes that its long established participation in U.S./Canada interline traffic and its own experience with FIRA demonstrate that charges of Canadian discrimination against American carriers are unwarranted. Since about 1947, Motorways or its predecessor company has experienced interruption of several interline operations because of the loss of an American interline partner. A number of instances are recounted which assertedly stemmed from the American carriers' successful applications for Canadian operating authority. (While certain interline partners of Motorways undoubtdly wer successful in obtaining Canadian authority, the record does not establish whether this was the cause of the failure of the interlines.)

Motorways has acquired, in transactions reviewable before FIRA, two transprotation companies with regional routes. The first application was approved without comment or condition. The second acquisition was approved after acceptance of certain undertakings which were "required" by FIRA. These undertakings included the following: (1) all existing and new managerial positions in the acquired company would be filed by Canadian citizens or landed immigrants normally resident in Canada; (2) one vehicle would be added for scheduled service between Prince George and Edmonton, British Columbia carrying approximately 50,000 pounds of freight a day, to continue subject to traffic availability; and (3) during the first five years of ownership, "best effort" would be made to sell 15 percent of the company's shares to residents of Canada. In general, Motorways has had no difficulty in satisfying these undertakings and does not consider them to be onerous. In the case of the last undertakings mentioned, the 5 year period has expired and no divestiture of shares was required because Motorways was not satisfied that a fair market value could be obtained for the shares. Finally, Motorways was itself the object of a proposed acquisition by International Utilities which acquisition was disapproved by FIRA. (See International Utilities below).

Tri-State Motor Transit Co.; A.M. Jacobs.

Tri-State holds substantial authority to perform single-line international service between Canadian and American points. It complains of a drop in annual revenue on these movements between 1980 and 1981 of over $500,000 which it attributes to an influx of Canadian carriers which have obtained competitive authority from the Commission. Over the last 20 years Tri-State has found it difficult to obtain operating authority in Canada. It has filed 20 applications before provincial licensing boards over the years, with only partial success in 4 cases. However, in all of its dealings with the Canadian provinces, it has never experienced any discrimination. Tri-State provides extensive detailed information about the specific licensing requirements of various provinces with which it has had experience. The overall thrust of this testimony is that these provincial requirements are

extremely complex, varied, and generally more restrictive than present-day Commission entry regulations.

On the other hand, it indicates that Canadian carriers have been able to obtain additional United States authority allowing performance of single-line service where joint-line operations previously had been used. When Canadian carriers continue to offer interchange operations despite new direct authority, their portion of the rate to handle Tri-State shipments short distances into Canada often runs up to $10 a mile. Finally, Tri-State has given serious consideration to the purchase of Canadian authorities but has refrained from doing so because the Provinces refuse to consider any acquisition applications until FIRA approval has been obtained. However, negotiations in this area are apparently still taking place.

• Butler Trucking Company; E. Steward Butler.

According to this witness, the disparity in licensing standards between the United States and Canada exacerbates the problems of American carriers trying to obtain Canadian authority through their more restrictive application procedures. At least one large Canadian shipper is reluctant to support American applicants at all, assertedly because it is much easier to support a Canadian carrier already authorized to serve the shipper in Canada for appropriate authority to perform the United States portion of the needed service.

In supporting its claims of traffic diversion due to recent grants of authority by the Commission to Canadian carriers, Butler describes two specific incidents: After one Canadian carrier received metals and refractories authority in the United States, Butler's northbound refractories traffic to an Ontario steel producer was withdrawn. Although Butler's one-way rate is lower, it was informed by the shipper that the refractories traffic was tendered to the Canadian carrier which now could perform southbound steel movements in lower cost single-line service. On another similar occasion, two new Canadian carriers diverted all of the traffic previously moved by Butler from a Pennsylvania shipper. It did manage subsequently to regain half of this freight.

• Warren Transport, Inc.; Kenneth R. Nelson.
• Interstate Motor Freight System, et al; Michael P. Zell.
• American Trucking Associations, Inc.; Richard Bogue.

Analysis of 16 of the broadest Canadian carrier general commodities applications pending before the Commission shows that if all the involved certificates were to be issued, at least six Canadian carriers would be authorized to perform single-line international service between various points in Canada and points in all the 48 contiguous States. Many States would be served by greater than six Canadian carriers (up to 14 in Michigan). This analysis does not show the extent to which the included carriers are presently competing in the States sought in their respective application. Also, the extent of their complementary Canadian authority was not shown.

• Canadian Trucking Association, et al, Stephen Paul Flott.

Mr. Flott asserted that the Canadian motor carrier market is extremely vulnerable to competition from American motor carriers. Because the Canadian population is highly concentrated in areas near the Canada-United States Boundary line, American carriers operating in a significantly larger domestic market are in a strong position to make the marginal investments necessary to penetrate the Canadian trucking market. The importance of U.S.

LTL traffic to Canadian carriers also was emphasized. Without this inbound American LTL traffic, Canadian carriers allegedly cannot hope to survive.

Statistical studies were submitted which show (among other things) the percentage of international traffic handled by Canadian-owned and American-owned carriers during 1980 (based on revenue): American carriers - 54.8% Canadian carriers - 45.2%. This traffic purportedly represents 24.1 percent of the total revenue earned by Canadian carriers during this period and only 2.6 percent of the American's overall revenue. Statistics are also offered which show the balance between single-line and joint-line traffic in 1980 (by revenue):

Less Than Truckload	
Single-Line:	13.2%
Joint-Line:	86.8%

Truckload	
Single-Line:	22.1%
Joint-Line:	77.9%

Another abstract indicates that 93 percent of the truckload freight and 79 percent of the LTL freight between the two countries originated in the United States during 1980. It is argued that U.S. based carriers enjoy a strong competitive advantage because of this large imbalance of traffic originating in the U.S.

* Frederick Transport Limited; George Frederick.

Frederick emphasizes the role of transportation in the overall picture of international trade between the United States and Canada. To put this role into perspective, it describes a typical shipment handled by Frederick from the United States to Canada: The transportation cost represents only 1.2 percent of the total value of the product moved (a farm combine). It points out that Frederick and other Canadian motor carriers provide service for numerous American manufacturers which facilities important sales to Canadian customers. It urges that the issues raised in this proceeding be viewed within this broader context.

* Sunbury Transport Limited, et al; Dr. Stephen Bank and Bruce A. Drost.

Sunbury and its affiliates estimate that in excess of 50 percent of motor carrier traffic from the United States to New Brunswick points is being handled by three named U.S. motor carriers. On the other hand, the majority of the southbound traffic is handled by New Brunswick carriers.

* Cast North America Ltd.; Gilles Belanger and Louis Derome.
* Canadian Highway Transport Lawyers' Association; Peter D. Green.
* Matlack, Inc.; Richard Beland.

During 1981, Matlack transported 129 bulk loads from the United States to points in Canada (compared to over 420,000 loads handled system-wide. It attributes this large disparity in volume to inability to compete effectively in the Canadian market because of its necessity to interline. It complains that Canadian delivery carriers received about 50 percent of the total revenue on these shipments while performing only 25 percent of the involved service.

* Freeport Transport, Inc.; Daniel R. Smetanick.
* The North Atlantic Ports Association; John H. Brady.
* Schneider Transport, Inc.; Neil A. DuJardin.

During the past seven years, Schneider has investigated, on a number of occasions, the feasibility of obtaining Canadian

operating authority. Initially learning that each Province had its own method of regulation and regulatory body, all were contacted in an attempt to obtain the necessary information concerning procedures and requirement for obtaining authority. This effort was protracted for several months because of the asserted lack of cooperation by the involved Canadian agencies. Schneider's ultimate conclusion, based on the information received from the Provinces and conversations with attorneys and carrier representatives familiar with this area, was that it was not economically feasible to pursue the involved authority. Another concerted effort was prompted by a request for service from the Wisconsin Paper and Pulp Manufacturers Traffic Association. Schneider became part of a cooperative effort with various shippers and carriers to obtain the Canadian authority required to institute service on behalf of the Association. It was finally decided that despite shipper protestations to the contrary, not enough traffic would be available to justify the expense of obtaining authority. Efforts to establish suitable interline arrangements also were made to no avail. A limited piece of authority finally obtained in 1979 from British Columbia has not yet covered the cost of obtaining it. During the Fall of 1980, an interline arrangement was established into Ontario under which substantial traffic is handled. Schneider complains of its "inherent" limitations.

Finally, Schneider perceives FIRA to be a major impediment to the eventual establishment of a terminal-oriented type of service in Canada.

* TNT Canada, Inc.; Patrick J. McGuire.

It has been the personal experience of this witness that American carriers have received even-handed treatment compared to Canadian carriers and that the same statutory entry tests have been applied equally and fairly in granting or denying applications for motor carrier authority in Ontario and other Canadian provinces.

TNT, an Australian-owned company, has made two applications before FIRA, neither of which was successful.

* Jones Transfer Company; Thomas M. Hummer.

Jones, an American motor carrier, has participated in Canadian traffic on a daily basis for over 30 years. During February 1982, such traffic was interlined with 14 carriers at the Detroit, MI, gateway. Over 1,100 shipments were moved producing revenue to Jones of over $213,500. Carriers with pending or recently granted applications before the Commission were responsible for over 75 percent of this revenue as interlining carriers. Carriers such as Bondy Cartage Limited have diverted substantial traffic from its interchange operations since receiving U.S. authority. In 1981, Bondy instituted single-line operations into Michigan and Ohio which Jones estimates will reduce its 1982 interline revenue by $269,000 over 1979. Jones' attempt to obtain a license to serve Windsor, Ontario, and vicinity was abandoned due in part to the large number of opposition carriers. Jones also viewed FIRA as a major obstacle since approval would be required to operate a terminal in Canada even after a successful operating authority application before the Provincial board.

* Thibodeau-Finch Express Limited; Leo J. Thibodeau.

This firm is presently seeking authority before the Commission which could be used to perform a single-line international service in place of existing joint-line operations with

American partners. However, it would assertedly attempt to maintain its joint-line arrangements as much as possible and develop new markets for its single-line service.

* Central Transport, Inc., et al; James D. Payne.

Central contends that even prior to enactment of the Motor Carrier Act of 1980, it was easier for foreign-domiciled carriers to obtain authority in the United States than for American carriers to obtain authority in Ontario. This difficulty coupled with perceived FIRA requirements acts as a deterrent to American efforts to obtain authority in Canada.

* Ace Doran Hauling & Rigging Co.; Norbert J. Doran.

Holding no permanent Canadian authority, Ace Doran must make various arrangements (including interchanges involving load transfers, tractor exchanges or trip permits) in order to provide its customers with service to and from Canadian points. It complains that economical and expeditious service cannot be provided under these circumstances. Apparently, it has never sought Canadian operation authority.

White Stat Trucking, Inc.; Frederick Berkoroty.
United Trucking Service, Inc.; Lavergne L. Adsit.
Alvan Motor Freight, Inc.; C.J. Koster.
Short Freight Lines, Inc.; Richard L. Poirier.
Earl C. Smith, Inc.; Leo Shimsky.

Smith, like many of the immediately preceding listed American carriers has lost joint-line traffic since the issuance of American operating rights to its interline partners. It believes that Smith cannot remain competitive in the trucking industry to and from Canada unless it is "afforded an equal opportunity" to obtain Canadian operating rights.

Holland Motor Express, Inc.; Kenneth DeVries.

Holland stands to lose about $650,000 in annual revenue if four Canadian carrier applications now pending before the Commission are granted and these carriers then curtail their existing interlines with Holland. This traffic accounts for 10 percent of its Detroit terminal traffic and the loss would result in layoff of some personnel at this facility.

* Lynden Transport, Inc.; Henry Forman.

In 1976, Lynden entered into negotiations to purchase an Alberta trucking company, Frickers Truck Service Ltd. After a thorough investigation of Fricker's operations and the validity of its operating authority (including "assurances" by the Alberta Motor Transport Board that Fricker's was "in good standing"), Lynden agreed to purchase Frickers for $200,000. The purchase received the required approval of all interested Canadian agencies, including FIRA. Lynden agreed to several undertakings in its application before FIRA, including promises to (1) lease larger premises, (2) retain Ficker's present employees, (3) endeavor to expand Ficker's business, (4) employ Canadians in any expansion of Ficker's business, (5) purchase $500,000 worth of capital equipment from Canadian suppliers during the first five years of ownership, (6) provide Fricker's with adequate capital to carry out purchase and expansions, (7) retain Frickers' present President/Director and employ a specified Canadian citizen as General Manager, and (8) issue, within five years of pruchase, shares in Fricker's to Canadian buyers, provided Canadian financial advisors confirm that a market exists

for them. All of these transactions resulted in capital expenditures by Lynden of over $1.5 million.

After the purchase, the Alberta Board conducted a dormancy review of Fricker's operations and ultimately "virtually cancelled" the certificate based thereon. Lynden believes, based at least in part on advice of Canadian counsel, that this review by the Alberta Board in a purchase situation was virtually unprecedented and shows that Lynden was discriminated against in its efforts to obtain Canadian operating authority. The Alberta board now advises Lynden that it should file an application to obtain the authority believed to have been acquired through the purchase of Fricker's.

On cross-examination, Lynden's witness indicated that it agreed to the undertakings in its FIRA application because it believed these promises necessary for approval. He further indicated that these undertakings are general business practices that good businessmen may likely undertake in any case. The primary difference in this situation is that FIRA requires periodic review to see what progress is being made in implementing the undertakings.

* Commercial Truck Co., Ltd., William M. Cartside.

Based on personal observation of the attitude and action of the British Columbia Motor Carrier Commission and the extensive presence of American carriers operating in British Columbia, Commercial concludes that British Columbia applies the same licensing standards to American carriers that it does to Canadian carriers. Mr. Cartside contacted E.D. Tyson, Deputy Superintendent of the Motor Carrier Branch, Ministry of Transportation and Highways, Province of British Columbia, with respect to the discrimination issue. Mr. Tyson responded in writing that,

> There is no law or policy of the Motor Carrier Commission of British Columbia which differentiates between U.S. or Canadian applicants for operating authority. This statement holds true regardless of whether the application is made by U.S. applicant resident in the United States or using B.C. or Canadian addresses or even a subsidiary firm of U.S. parent.

Mr. Tyson was unable to identify the number of American carriers holding British Columbia authorities from existing records of the Motor Carrier Commission because the British Columbia Commission has not found it necessary to identify the nationality of its carriers. Decisions are based only on the merits of applications. Finally, Mr. Tyson performed a special statistical study to determine the relative success rates of British Columbia and non-British Columbia applications before the Motor Carrier Commission. For the period from September 1, 1981, to January 29, 1982, there were denials in 4.3 percent of British Columbia carriers' applications, 7.58 percent of applications from other Canadian residents and 7.69 percent of applications of U.S. domiciled carriers. The lower percentage of denials for British Columbia residents is explained in part by local dump truck applications which were granted freely during the sample period.

Commercial states that American companies participate very extensively in British Columbia motor carrier transportation. While there was some confusion caused by a statistical shorthand used by the witness (the number of loading doors used by Canadian and American carriers at the primary sufferance warehouse in Vancouver) and the present questionable viability of a major U.S. carrier (T.I.M.E.-DC), the statistics presented to support this position appear to be based primarily on the witness's

experience. The volume of various categories of British Columbia traffic handled by American carriers is represented to be as follows: General freight (LTL, regular-route, scheduled operation) - 67 percent; heavy hauling (West Coast) - 45 percent; heavy hauling (East and Midwest) - 75 percent, household goods - 75 percent; and passengers - 90 percent.

* Washington Trucking, Inc.; Arthur G. Wright

Washington relates the considerable difficulty it encountered in obtaining operating authority from British Columbia. It was finally partially successful after Canadian counsel was retained. It complained of the inequality of its own treatment by the British Columbia Commission and the treatment of Canadian applicants before American Licensing agencies.

* C Mile Transport Ltd; George Costello.

C Mile, a Canadian carrier, explains the difficulties it also has experienced in obtaining operating authorities in Canada. It states that, for the most part, operating authorities granted in British Columbia are fragmented as to territories and commodities.

SM Transport, Inc.; Eugene E. Knoch.

Efforts by SM to arrange satisfactory interlines across the Border have been frustrated by Canadian carriers insisting on a disproportionate share of the through rate. Thus, SM has not been handling this traffic and it has been taken over by single-line service of Canadian carriers. It considered obtaining Canadian authority of its own but decided the attempt would be futile.

Diamond Transportation System, Inc.; Carl Pope.
H.J. Jeffries Truck Line, Inc.; Robert Fisher.
Wales Transportation, Inc.; Royce Searcy.
* Gelco Corporation; John W. Bell.

In 1974, Gelco acquired International Couriers Corporation, FIRA officials at which Gelco obtained a better understanding of what undertaking would be considered by the Canadian cabinet to be of "significant benefit to Canadian." The FIRA officials never made explicit statements as to what would be required, but they made clear the importance of promising as much as possible. Among the undertakings that arose out of these meetings, as well as meetings with various Provincial officials, were agreements to (1) fill all officer and management positions with Canadians, (2) increase the number of business locations to be added from 7 to 9, (3) guarantee the investment in a new Montreal facility of from $1,475,000 to $2,220,000, (4) make available to B.D.C., at no charge, all of Gelco's computer software technology, (5) purchase 225 vehicles in Canada within 12 months after approval, and (6) sell shares in B.D.C. so that in 8 years from the date of approval, not less than 40 percent of the shares of the company would be owned by resident Canadians. These undertakings were eventually accepted and the application approved.

Gelco's witness characterizes many of its undertakings as common sense business decisions it would have made even without prodding, and it has in fact exceeded some of the promises made. On the other hand, the FIRA application procedure compelled Gelco to make business commitments in advance or when they normally would have been made, resulting in loss of flexibility. Finally, Gelco's undertaking to increase Canadian equity in its enterprise was at the time contrary to its corporate practice and philosophy. It agreed to do so only because it considered it necessary

for approval of its application. Celco's alternative to approval was a "forced" sale of B.D.C. without ultimate control of the sale price.

Klaysen Transport, Ltd.; Thomas A. Klaysen.

Cross-examination brought out that the Alberta Motor Transport Board performed a dormancy review of Klaysen's operations which resulted in revocation of a number of its authorities. Alberta apparently conducts dormancy reviews as a general regulatory procedure, as well as every time a certificate is transferred. This procedure is also true of the British Columbia Motor Transport Commission.

Holmes Transportation, Inc., Henry W. Clements.
Leaseway Transportation Corporation; Robert M. Spira.

In 1976, Leaseway began negotiations to purchase a western Canadian auto carrier, Melchin Auto Transport. After filing its initial application with FIRA, Leaseway met with FIRA officials in Ottawa. It had a "fairly open discussion" of the circumstances under which the purchase would be allowed. FIRA, after setting forth the statutory context in which recommendations are made, discussed specific things that it requested Leaseway to undertake in connection with the purchase. Leaseway provided an internal memorandum which gives assertedly verbatim quotations of the suggestions for undertakings presented by FIRA at the meeting:

> Melchin will institute a program of executive compensation which will include the distribution of four to five percent of the pretax profits of Melchin to certain designated management employees...
>
> Melchin will offer its current employees no less favorable terms than are now in effect...
>
> Whenever economically possible, Melchin will source equipment in Canada...
>
> Within the next five years Melchin will spend... no less than $10,000,000 on capital equipment...
>
> Melchin will pursue the possibility of encouraging the developing of markets for exports of Canadian-built vehicles to the United States...
>
> Leaseway Ltd. will make equity interests of Leaseway Ltd. available to Canadian institutions and citizens...
>
> A majority of the officers of Melchin will be Canadians within the next twelve months...
>
> Leaseway Ltd. will provide management, accounting, and financial assistance for a management fee not to exceed one percent of the gross revenue of Melchin...
>
> Leaseway Ltd. will provide financial assistance as required for operations of Melchin and interest charges will not exceed the cost to Leaseway Ltd...
>
> Melchin, with the assistance of Leaseway, will design trailers specifically for its use in the western provinces of Canada and will cause these trailers to be manufactured by Canadian trailer manufacturers...
>
> Leaseway Ltd. will pursue a conservative dividend policy and in and event, will not impair the financial responsibility of Melchin...

Leaseway did not consider any of these suggested undertakings to be basically adverse to its best interests. Subsequently, it had several phone conferences with FIRA officials regarding changes in various undertakings. At least one draft was submitted to FIRA before a final draft of undertaking ultimately was accepted.

Another aspect of the FIRA review procedure was the solicitation by FIRA of the views of the various Provinces affected by acquisition. With this in mind, Leaseway wrote letters to these Provinces seeking their support for its application. Some of the involved Provinces apparently replied to FIRA but Leaseway was not made aware of what these responses contained.

• Donald McEwen, North Tonawanda, NY.

Mr. McEwen is a driver for a Canadian Motor carrier, Overland Express. His concern is with regard to Canadian companies and drivers performing work in the United States that traditionally has been performed by Americans. He contends that this practice places American carriers at a serious disadvantage because of the lower operating costs of the Canadian carriers. To Mr. McEwen two important aspects of this problem are the lower wage scale of Canadian drivers (nearly three dollars an hour less than American) and the exchange rate of the two countries' currencies which he contends is used to advantage by Canadian companies. He also complains that Canadians drivers disregard American Law once they are in the United States, resulting in further unfair competition for American companies. All of this impacts directly upon the employment situation of American drivers. The solution to the problem suggested by Mr. McEwen is to "close the border to all Canadian trucks."

• Charles J. Piscitello, Secretary-Treasurer of Teamsters Local 375, Tonawanda, NY.

Since the passage of the Motor Carrier Act of 1980, Local 375 has had approximately 30 percent of its members laid off as a result of bankruptcies, liquidations, sales, etc. Part of this problem stems from grants of authority to Canadian motor carriers resulting in diversion of freight previously handled by American carriers in joint-line service.

• Frank Campanella, Employee of Teamsters Local 375.
• Donald Piatek, Driver for Intercity Truck Lines of Buffalo.
• Robert Baschmann, Owner of Patriot Trucking Incorporated.
• Red Star Express Lines of Auburn, Inc.; John P. Doyle, Jr.

Red Star, after its formal submission of an application to FIRA, was asked by FIRA to make further undertakings. It refused to make any alterations in its initial submission of undertakings, but its application was approved without additional concessions.

• IU International Corporation; Robert Stier.

Mr. Stier testified for IU, which was appearing pursuant to a subpoena from the Commission. IU is a large, diversified multinational corporation incorporated in Maryland. It has significant transportation holdings, including American motor carriers Ryder Truck Lines, Inc. (appearing as a separate witness) and Pacific Intermountain Express Co. (PIE). IU itself is 30 percent Canadian-owned. In October 1979 IU entered into a contract to purchase Canadian Motorways, Ltd. (CML) from its British owner subject to approval of the Canadian government under the FIR Act. CML is a nationwide general commodity carrier.

In December 1979, IU filed its application with FIRA. By the conclusion of a series of meetings with FIRA officials during the first half of 1980, IU had made a number of undertakings, including promises to hire specific numbers of Canadian employees and to buy Canadian equipment and supplies. Of particular significance to IU were undertakings made on advice of its Canadian counsel to increase Canadian equity in IU. IU agreed to reduce 58 percent ownership of Canadian Utilities (CU) to 48 percent to provide for Canadian control. CU's 1979 gross revenues were $25 million Candian dollars. Subsequently, it agreed to divest itself totally of a CML household goods motor carrier subsidiary. It agreed to sell only to Canadian interests. Reportedly, FIRA made no counter proposals. The application was denied in August 1980.

As is the usual procedure, no reasons were given for the denial; however, IU's Canadian counsel, Mr. Hugh Morris, did have a subsequent meeting with high level FIRA officials. Mr. Morris informed IU that from this meeting he was convinced that the application had failed for three primary reasons: (1) IU's failure to increase Canadian equity directly in CML, (2) Canadian reluctance to approve a division of a foreign firm (referred to as the "branch plant" concept) rather than a separate Canadian-controlled subsidiary, and (3) recent change of policy at the Cabinet level indicating a more difficult burden of proof in certain "key" industries, of which transportation is apparently one. Mr. Morris told IU that transportation related applications will in the future face "formidable odds" and that for any chance of success the record must demonstrate that the owner had already made serious efforts to sell to Canadians. FIRA reportedly discouraged a further application by IU. IU was reluctant to modify its corporate structure for U.S. tax and other business reasons.

One final matter deserves some attention. Mr. Stier indicated that it had come to his attention that intense lobbying had been conducted against IU's application. He also indicated knowledge of Canadian offers (much lower than IU's) to purchase CML after it filed its FIRA application. Mr. Morris' communication to IU indicates his belief that the application had received a FIRA recommendation for approval, only to have it denied at the Cabinet level.

Rice Truck Lines; Patrick Rice.

Rice Truck Lines also appeared pursuant to Commission subpoena. In the fall of 1977 Rice, an American firm, filed a FIRA application for approval of its purchase of Boychuck's Transport, Ltd. (a Canadian motor carrier) and several non-carrier Boychuck's affiliates. Under the proposal, upon consummation of the transaction the four acquired firms would be consolidated into a single Canadian corporation under charter from the Province of Alberta. On cross examination Mr. Rice indicated that for 50 years Rice Truck Lines or its predecessor firms had performed operations (1) entirely in Canada (between Vancouver and Winnepeg), (2) between Salt Lake City, UT, and points in Alaska through Canada, and (3) between points in Alberta, British Columbia, and Saskatchewan, on the one hand, and, on the other, points in approximately 27 western States (for bulk commodities). Its FIRA application was approved, apparently without difficulty.

Sea-Land Service, Inc.; T.D. Jones and B. Carleton Bailey, Jr.

Sea-Land filed two verified statements which by agreement were not subjected to cross-examination. Its interest in this proceeding is intermodal transportation involving motor carrier

movement between points in the United States and Canadian ports for prior or subsequent movement by maritime carrier. Sea-Land avers that this type operation can and does result in rate discrimination against United States carriers for the reason that carriers operating through foreign ports are not subject to United States anti-discrimination and anti-rebate maritime shipping laws. It contends that this method of operation has resulted in lost jobs and revenue for United States ports and the United States carriers using those ports. It requests that the Commission adopt regulations for the consideration of actual or potential discrimination in applications by Canadian motor carriers for United States operating authority.

* Spector-Red Ball, Inc.; Ray Chesney.

This firm also appeared pursuant to Commission subpoena. In 1976, Spector Industries, Inc., merged with Benton Spry, Inc., which owned Hennis Freight System (an American motor carrier) and Hennis Freight Lines of Canada, Limited (a Canadian motor carrier). An application was filed with FIRA regarding Spector control of the Canadian Hennis. Spector made a number of undertakings, and the application was approved. Hennis Freight Lines of Canada, Limited because Spector Freight System of Canada, Limited.

Shortly thereafter Spector Industries merged with Red Ball Motor Freight, Inc., the result of which was Spector-Red Ball, Inc. Another application to FIRA was therefore required. In the meantime the FIRA compliance branch was indicating dissatisfaction with Spector's performance of its undertakings. Spector-Red Ball subsequently filed the FIRA application which made undertakings apparently less specific than previously made by Spector. Since that time Spector-Red Ball experienced serious financial difficulties and has filed for bankruptcy under United States law. The FIRA application remains pending.

* McLean Trucking Company, Claude Hamrick.

McLean also appeared pursuant to Commission subpoena. McLean's experience with FIRA was occasioned by its 1979 purchase of the assets of O.N.C. Freight Systems, an American motor carrier operating a single terminal in Canada at Vancouver, British Columbia. The terminal served as a pick-up and delivery point for United States-Canada traffic only, and no exclusively Canadian operations were performed therefrom. Because O.N.C. had operated in Canada prior to enactment of the FIR Act it was accorded "grandfather" status under which it did not need FIR Act approval. That status, however, was not transferred to McLean. McLean filed an application with FIRA and made certain undertakings. Subsequent to meetings with FIRA officials McLean's Canadian counsel advised McLean that in his opinion approval would not be forthcoming until it established a separate corporate subsidiary for the one terminal at Vancouver. Although reluctant to do so for business reason, it ultimately undertook to form a corporate subsidiary under the laws of British Columbia through which the business and operations of the terminal would be conducted. The application was approved.

* United Parcel Service; Edwin H. Reitman and Irving R. Segal.

United Parcel also appeared pursuant to Commission subpoena. The testimony revealed that UPS had applied to FIRA for approval of the acquisitions of two Canadian motor carriers, Genoble Distribution, Ltd. and Delivero (Canada), Inc. Both applications were denied. UPS subsequently received in its own right authority to serve all points in Ontario by expanding its preexisting UPS operations. FIRA approval was not required as

UPS had established a business presence prior to enactment of the FIR Act.

* James M. Spence, an individual.

Mr. Spence, appearing under the sponsorship of OCCA, is a Canadian attorney practicing law with a Toronto, Ontario, law firm. He was at one time (from November 1974, to June 1976) the senior legal advisor of FIRA. In that position his responsibilities included legal interpretation of the FIR Act of development of guidelines for applying the Act. Mr. Spence as a private attorney has handled a number of cases before FIRA, the latest involving a motor carrier, however, being in 1978.

His testimony described the Act and the review process. In response to a question asking whether FIR Act approval was becoming more difficult to obtain, Mr. Spence replied that there had been a slight reduction in the approval rate since 1979 (from approximately 92 to 85 percent) which he attributed to increased encouragement by FIRA officials for more specific undertakings than in the past. Mr. Spence also believes that Canadian equity, although an important aspect, is not a sine qua non for approval of an application if other significant benefits are established.

Mr. Spence was cross-examined with respect to statistical information released by FIRA for the year 1980-1981. He agreed that two-thirds of the assets authorized to be transferred were already foreign controlled. It was also pointed out and confirmed by Mr. Spence that of 36 applications involving Canadian-controlled firms, only three had assets in excess of $5 million.

Richards Transport, Ltd.; Lorne Richards.

Richards, a Canadian motor common carrier engaged in what is commonly referred to as "heavy hauling", submitted a verified statement. It holds operating authority in the western United States and western Canada and participates in domestic traffic in both countries, as well as international traffic. Richards names a number of United States motor carriers which hold Canadian operating authority and with which it competes for traffic. It claims that American carriers dominate international traffic and contends that liberization of entry control in the United States is helping to redress what it calls a historical imbalance that has existed in favor of the American carrier.

* Douglas C. New, an individual.

Mr. New appeared under the sponsorship of the ATA. He is an attorney in Canada and a former employee of FIRA. Since leaving FIRA he has been employed by a private law firm representing applicants before FIRA. Mr. New submitted a verified statement describing the FIR Act and the review process, and was the subject of lengthy cross-examination. His statement and oral testimony was generally similar to and in accordance with that of Mr. Spence, differing only in degree.

* Mayne Nickless, Inc.; Melvin E. Bailet.

This witness appeared pursuant to Commission subpoena. Approximately 3 years ago Mayne Nickless, Ltd., an Australian Corporation, negotiated to buy Loomis Corporation, a United States public company which held wholly-owned Canadian subsidiaries. Some of the Canadian businesses had been in opertion upwards of 50 years and have annual aggregate revenues of approximately $90 million. They include trucking firms and security guard operations. Mayne Nickless, Inc. is a United States corporation.

Ex Parte No. MC-157

Two sets of undertakings were made to FIRA with regard to the acquired Canadian subsidiaries. All were considered necessary to obtain approval of the application and involved such areas as facility construction and territorial expansion. An undertaking made with reluctance by the applicant was to divest itself of 49 percent of the subsidiaries' stock by offering it on the Toronto stock exchange. The application was approved in December 1979; however, no stock has as yet been divested.

Ex Parte No. MC-157

APPENDIX II

Unverified and Unsworn Statements:

The persons named below appeared at oral hearing to comment on the issues, but did not file statements. The city in which each appeared is indicated.

Senator Donald W. Riegle, Jr., represented by Michael P. Smith; Detroit, MI.

Senator Slade Gorton, represented by John Solheim; Seattle, WA

Congressman John LaFalce; Buffalo, NY

Congressman Henry Nowak, represented by Jim Schmidt; Buffalo, NY.

Raymond Mills, Jr., Vice President of Sales and Operations, True Transport, Inc., Syracuse, NY.

Mr. Mills described an unsuccessful application before the Ontario Highway Transport Board.

Ex Parte No. MC-157

APPENDIX III

PARTIES FILING POST-HEARING BRIEFS:

(1) East North America Ltd.; Commercial Truck Co., Ltd.; Dominion-Consolidated Truck Lines Limited; Frederick Transport Limited; Interstate Motor Freight System; Laidlaw Transport Limited; Lesco Trucking Company, Inc.; Midland Transport Limited; Millar & Brown, Ltd.; Motorways (1980) Limited, dba The Bulk Carriers Company; Richards Transport, Ltd.; RST Industries Limited; Sunbury Transport Limited; Thibodeau-Finch Express, Ltd., TNT Canada, Inc.; Trans-Canada Truck Lines, Inc., jointly.

(2) American Trucking Associations, Inc.; Regular Common Carrier Conference; Common Carrier Conference - Irregular Route; National Tank Truck Carriers, Inc.; Specialized Carriers and Rigging Association; Lynden Transport, Inc.; S M Transport, Inc.; Tri-State Motor Transit Co.; Freeport Transport, Inc.; Washington Trucking, Inc.,; Schneider Transport, Inc.; James Elwood Quinn, Inc.; Hall's Motor Transit Co.; Warren Transport, Inc.; Diamond Transportation System, Inc.; Males Transportation, Inc.; and H.J. Jeffries Truck Lines, Inc., jointly.

(3) Canadian Trucking Association; Atlantic Provinces Trucking Association; Association du Camionage du Quebec (Trucking Association of Quebec); Ontario Trucking Association; Manitoba Trucking Association; Saskatchewan Trucking Association; Alberta Trucking Association; and British Columbia Motor Transport Association, jointly.

(4) Earl C. Smith, Inc.; Holland Motor Express, Inc.; Jones Transfer Company, Short Freight Lines, Inc.; White Star Trucking, Inc.; Ryder Truck Lines, Inc.; Central Transport, Inc.; Alvan Motor Freight, Inc.; and United Trucking Service, Inc.; jointly.

(5) Butler Trucking Company.

(6) Traffic Board of the North Atlantic Ports Association.

(7) Yellow Freight Systems, Inc.

(8) Trans-Canada Auto Train Transport, Ltd.

(9) E. J. Bourque Transport, Ltd., Provost Cartage, Inc., and Transx, Ltd., jointly.

(10) Office of Compliance and Consumer Assistance, Interstate Commerce Commission.

APPENDIX IV

SUMMARY OF FIRA ADMINISTRATIVE PROCESS

The person or corporation seeking government approval must submit an application to the Foreign Investment Review Agency. Under the FIR Act, FIRA has no decision-making function. Rather, it processes the application and advises and assists the actual decision-making body, the Governor in Council. The Governor in Council appears to be roughly comparable to the President's Cabinet in the United States. As one party in this proceeding notes, it is a political body, not an administrative tribunal. Applications are granted by the Governor in Council if it finds that the proposal before it will result in a "significant benefit to Canada".

In determining whether the proposal would result in a significant benefit to Canada, the FIR Act requires consideration of the following factors: (1) the effect on employment, resource processing, utilization of parts, components, and services produced in Canada, and on exports from Canada, (2) the degree and significance of participation by Canadians in the business, (3) the effect on productivity, efficiency, technological development, and product innovation and variety, (4) the effect on competition, and (5) the compatability with industrial and economic policies of any province likely to be affected significantly. The weight applied to the various criteria varies according to the industry involved, the business to be initiated or acquired, or any of a number of other factors bearing on the particular situation.

FIRA considers these criteria and makes a recommendation of approval or disapproval to the Cabinet minister responsible for FIR Act matters. In its review of the application, FIRA circulates the application to potentially interested provincial

governments and federal government departments for their views. The application is also submitted to the federal government's Competition Branch for assessment under the Combines Act (apparently similar to United States anti-trust legislation) as to the impact approval of the application would have on competition in Canada. Input is also requested from the Federal Department of Industry, Trade, and Commerce.

After initial review, a meeting or meetings may be held between agency officials and the applicant. An important purpose of the meeting is to discuss the submission by the applicant of contractually binding obligations, commonly called "undertakings", designed to ensure that the proposed business venture will result in the desired benefit to Canada. For example, an applicant may promise or undertake to hire a certain number of Canadian employees, or to establish a separate corporate identity (with Canadian directors) for the business in Canada. These meetings are alternatively referred to as "discussions" or "negotiations". The Canadian government discourages the use of the term "negotiations"; instead, it characterizes the discussions as "assistance" by FIRA in making the proposal more attractive and improving prospects of approval. Suggested undertakings are often strongly recommended by the agency.

After undertakings are received from the applicant (or revised in light of the meetings), FIRA prepares a report and makes a recommendation of allowance or disallowance to the government minister responsible for FIRA matters. The minister, in turn, makes a recommendation to the Governor in Council (Cabinet). The Governor in Council may allow the application, disallow the application, or refer the matter back to the minister or FIRA for reassessment, or for answers to questions it may have.

The deliberations of the Governor in Council are conducted in secret because of confidentiality provisions in the Act and no reasons are given should the application be disallowed. No

written decision discussing the merits of the applications or any issues raised is forthcoming, as the Governor in Council simply votes "yes" or "no" on the tendered proposal. Moreover, although an applicant may submit a second (or on very rare occasions a third) application, there is no right of appeal to the decision of the Governor in Council. Its decision is final.

While there are no formal procedures for offering evidence in support of or in opposition to an application, third-party representations in the form of lobbying (often referred to in the record as "interventions") is common. This lobbying takes place before the provincial governments, the federal government, or before anyone else with any perceived influence in the decision-making process. Interventions may be written or oral (often by telephone). Notice of interventions is not afforded the applicant. Apparently, most lobbying is in opposition to an application, as for example, by the applicant's actual or potential competitors or by management of the acquired business in resistance to a takeover. Lobbying, however, is also engaged in by those supporting approval.

APPENDIX V

SUMMARY OF AMERICAN MOTOR CARRIER EXPERIENCE WITH FIRA

A common complaint of the witnesses who testified in this investigation is the secrecy which permeates the whole process. At no time are applicants informed concerning the number or nature of any third-party representations made in opposition to their proposals. Because no reasons for denial are provided, applicants have no information regarding the impact of those representations or any real guidance for future proposals.[1/] Even in those situations where FIRA has indicated explicitly undertakings which would be advantageous (see the Leaseway Transportation Corporation testimony for example), there is still no assurance of success. Most applicants felt as if they were groping in the dark, despite written and oral advice from FIRA officials. It appears that applicants are neither informed directly nor can they ascertain with any confidence the information they consider most necessary, namely, the minimum undertaking required for approval of their applications. An applicant whose initial application has been denied knows, in refiling, only that its previous undertakings had proven deficient.

An obvious effect of this secrecy (or confidentiality) is that some applicants will reluctantly undertake more than actually necessary for approval of their applications. While this is a positive result of the process from the Canadian point of view, it is another negative factor from the American business standpoint. Overall, it does not seem, however, to have caused American firms serious difficulties so far. In at least one

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1/ Certain periodical publications can be obtained which make some attempt at systematic analysis of the reasons for the success vel non of FIRA applications.

instance brought to our attention, an application was granted even though the applicant declined FIRA suggestions to supplement its undertakings. Red Star Express of Auburn, Ine., after submitting its application to FIRA, was asked to make further undertakings. It refused to alter its initial submissions, but its proposed acquisition was allowed nonetheless.

For the most part, the American motor carriers appear to view the undertakings described on this record as costs and requirements of doing business, similar to many others they encounter in a general business context. They concede that many are actions that any firm would consider good business practice, or perhaps a part of corporate responsibility. In this category fall such items as employing Canadian citizens, buying equipment made or sold in Canada, and attempting to provide expanded or improved service. Other undertakings, while departures from their everyday procedures, represent concessions which appear to have caused no significant disruption to the firms which made them. For instance, Delco Corporation, until it applied for approval of its acquisition of B.D.C. Ltd., had not provided specifically for equity participation in its foreign subsidiaries by the nationals/citizens of the foreign nation. Although it had been considering a change in that policy for some time, it views its ultimate undertaking to provide for Canadian ownership participation in B.D.C. as having been accelerated by the FIRA application process.

The undertaking of Delco discussed above brings us to the general question of the necessity to provide for some Canadian ownership of acquired companies in order to obtain approval of an application before FIRA. This is one of the most strongly FIRA-urged undertakings and one of the most resisted by Americans in light of the serious encroachments on applicants' freedom to conduct their operations in accordance with their own business judgment. Again, it is not clear that significant equity participation is an absolute necessity for allowance of a trans-

nation, but several carriers felt constrained to offer ownership to Canadians (often in the area of 50 percent). A number of witnesses believed very strongly that they had to provide for Canadian equity participation to have had a chance of success before FIRA. The witness from McLean Trucking Company, for example, was convinced that McLean's application would have been denied in the absence of an undertaking of this particular nature. On the other hand, Ryder Truck Lines, Inc., also was told that Canadian equity participation was necessary, but its application was finally approved without it. It is difficult to determine on this mixed record whether the offering of ownership to Canadians is requisite to favorable action on an application. It is clear that applicants receive considerable pressure from FIRA in this direction. Once again, however, it would appear that no applicant would agree to an undertaking if the transaction were not generally considered to be in its best interests overall.

Finally, it bears repeating that these undertakings are legally binding. FIRA conducts a periodic review (beginning annually) in order to determine how well the undertakings are being carried out. On some occasions where it appeared that it was not practical to fulfill a commitment which seemed reasonable when made, FIRA has allowed renegotiation to obtain an undertaking that is capable of fulfillment.

Ex Parte No. MC-157

APPENDIX VI

TEXT OF THE PRESIDENT'S PARTIAL SUSPENSION OF THE CANADIAN - MEXICAN MORATORIUM

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 20, 1982

MEMORANDUM FOR THE UNITED STATES TRADE REPRESENTATIVE

SUBJECT: DETERMINATION UNDER THE BUS REGULATORY REFORM ACT OF 1982

The Bus Regulatory Reform Act of 1982 addresses in Section 6 the issue of transborder trucking. It imposes a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. I am authorized to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. I must also provide written notice to the Congress of such removal or modification before it becomes effective. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof which substantially prohibits the granting of motor carrier authority to persons from the United States. I hereby determine that this sixty-day advance notification provision is not now applicable to Canada.

The transborder trucking issue has been the subject of extensive discussions between the United States and Canada and between the United States and Mexico. Because of the importance of fair and open competition in this important service sector, I am today instructing you, as my Trade Representative, to intensify our efforts to negotiate a fair and equitable resolution of this issue with both Canada and Mexico.

I regret that with respect to Mexico there has not yet been progress sufficient to justify a modification of the moratorium. A substantial disparity remains between the relatively open access afforded Mexican trucking service coming into the United States and the almost complete inability of United States trucking interests to provide service into Mexico.

In the case of Canada, our trucking industry is not now, nor has it been, precluded from providing services into that country. However, our regulatory schemes do now differ. Since the United States deregulation legislation, Canadian trucking interests could have an opportunity to provide single-line

service into the United States more easily than their United States counterparts can provide into Canada. In addition, United States firms seeking to become established in Canada may be subjected to investment restrictions not facing their Canadian competitors.

I believe that our national interest is best served by fair and equitable competition between United States and Canadian trucking interests in our two markets.

Therefore, under my authority to remove in whole or in part the moratorium imposed in Section 6 of the Bus Regulatory Reform Act which prohibits issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country, I hereby find that it is in the national interest to modify the moratorium by suspending it insofar as Canada is concerned as set forth below.

Accordingly, you are directed to notify the Congress today on my behalf that, effective tomorrow: (1) The moratorium for Canada is suspended insofar as necessary to permit the Interstate Commerce Commission (ICC) to grant authority to motor carriers under the appropriate sections of 49 U.S.C. subtitle IV. This suspension is expressly conditioned upon the Commission, in making determinations on whether the proposed transportation serves a "useful public purpose" or is in the "public interest," according great weight to the national transportation policy, particularly the mandates to promote "economical and efficient transportation," and "to encourage sound economic conditions in transportation including sound economic conditions among carriers." Such determinations by the Commission shall be consistent with the directives of the United States Trade Representative concerning the international trade policy of the United States; (2) The moratorium in regard to Canadian applicants is further modified by suspending it to permit the ICC to issue temporary and emergency temporary authority, and to issue certificates in motor carrier merger, consolidation, and acquisition of control proceedings, and motor carrier restriction removal proceedings; (3) The moratorium is further modified by suspending it insofar as issuance of ICC authorities to Canadian carriers for domestic traffic in the United States under the appropriate sections of 49 U.S.C. subtitle IV is concerned. Canadian-owned, controlled, or domiciled firms will be able to apply for and receive ICC authority for operations wholly within the United States.

Finally, having directed you to seek an understanding with Canada that will ensure the fair and equitable treatment of both Canadian and United States trucking interests on both sides of the border, I further direct you to report back to me within sixty days on those discussions. It is my expectation that such time should be sufficient for an appropriate understanding to allow me to finally remove the moratorium.

This determination shall be published in the Federal Register.

Ronald Reagan

Attachment D
Ambassador Brock Letter to Ambassador Gotlieb

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

November 17, 1982

The Honorable Allan E. Gotlieb
Ambassador of Canada to the United States
1746 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Dear Ambassador Gotlieb:

I have the honor to refer to discussions among representatives of our two Governments relating to the transborder trucking issue. In the context of those discussions, I have the honor to propose the following understanding between our two Governments:

1. Both the United States of America and Canada are committed to improving the flow of commerce across their borders and believe that the availability of competitive, market-oriented motor carrier services can contribute to the efficiency of such commerce. In this regard, it is the goal of both governments that their respective motor carrier regulatory authorities maintain a policy of non-discrimination.

2. Both sides subscribe to providing full, fair and equitable opportunities among truckers from both countries to compete for the carriage of international traffic. They recognize, however, that there are differences in the policies and economies of the two countries which may affect the competitive opportunities available to motor carriers. If these differences result in a major shift in the balance of trade in trucking services to the injury or detriment of an important segment of the industry, the parties will use the consultative mechanism provided in section (5).

3. Both Governments welcome mutually beneficial investment in the motor carrier sector and confirm that their investment policies will favor economically efficient competition. Both Governments also confirm the desirability of prompt processing of motor carrier applications before the pertinent bodies and pledge their efforts to this end.

4. The two sides agree on the objective of expediting trade by means of the most efficient and economical transportation possible, including single-line services. In this respect, both sides will endeavor to give significant weight to the needs and desires of shippers and consumers.

5. The two sides agree to establish a consultative mechanism with a view to resolving problems which affect either or both countries in the trucking sector. This mechanism will include the ICC, the Canadian Conference of Motor Transport Administrators (CCMTA) at the Commissioner or equivalent level, the American Association of Motor Vehicle Administrators (AAMVA), and the Federal Departments concerned with transportation, foreign affairs, trade and other interested agencies. Subjects for discussion may extend to the full range of truck transportation problems, including taxes, registration, and standards. Both sides shall have the right to examine the operation of this understanding and request discussions pertaining to it. Either side remains free to take appropriate measures if, after consultations through this mechanism, the problems under discussion have not been solved to their mutual satisfaction.

I have the honor to propose that, if the foregoing is acceptable to the Government of Canada, this letter and Your Excellency's confirmatory reply constitute an understanding between our two Governments effective on the date of the complete lifting of the moratorium on the issue of certificates and permits to Canadian owned or domiciled carriers provided for in the Bus Regulatory Reform Act.

Accept, Excellency, the renewed assurances of my highest consideration.

Very truly yours,

WILLIAM E. BROCK

Attachment E
Ambassador Gotlieb Letter to Ambassador Brock

Canadian Embassy Ambassade du Canada

1746 Massachusetts Ave. N.W.,
Washington, D.C. 20036-1985

November 24, 1982

Dear Mr. Ambassador,

I have the honour to refer to your letter dated November 17, concerning discussion among representatives of our two Governments relating to the transborder trucking issue. After consultation between the appropriate Canadian provincial and federal authorities, I have the honour to confirm the following understanding between our two Governments:

1. Both the United States of America and Canada are committed to improving the flow of commerce across their borders and believe that the availability of competitive, market-oriented motor carrier services can contribute to the efficiency of such commerce. In this regard, it is the goal of both Governments that their respective motor carrier regulatory authorities maintain a policy of non-discrimination.

2. Both sides subscribe to providing full, fair and equitable opportunities among truckers from both countries to compete for the carriage of international traffic. They recognize, however, that there are differences in the policies and economies of the two countries which may affect the competitive opportunities available to motor carriers. If these differences result in a major shift in the balance of trade in trucking services to the injury or detriment of an important segment of the industry, the parties will use the consultative mechanism provided in section (5).

3. Both Governments welcome mutually beneficial investment in the motor carrier sector and confirm that their investment policies will favour economically efficient competition. Both Governments also confirm the desirability of prompt processing of motor carrier applications before the pertinent bodies and pledge their efforts to this end.

.../2

The Honorable William E. Brock III,
United States Trade Representative,
600 17th Street, N.W.,
Washington, D.C. 20506

4. The two sides agree on the objective of expediting trade by means of the most efficient and economical transportation possible, including single-line services. In this respect, both sides will endeavour to give significant weight to the needs and desires of shippers and consumers.

5. The two sides agree to establish a consultative mechanism with a view to resolving problems which affect either or both countries in the trucking sector. This mechanism will include the Interstate Commerce Commission (ICC), the Canadian Conference of Motor Transport Administrators (CCMTA) at the Commissioner or equivalent level, the American Association of Motor Vehicle Administrators (AAMVA), and the Federal Departments concerned with transportation, foreign affairs, trade and other interested agencies. Subjects for discussion may extend to the full range of truck transportation problems, including taxes, registration, and standards. Both sides shall have the right to examine the operation of this understanding and request discussions pertaining to it. Either side remains free to take appropriate measures if, after consultations through this mechanism, the problems under discussion have not been solved to their mutual satisfaction.

In accordance with these principles, the province of Manitoba is resuming, and all other provincial authorities are continuing, the processing of applications from U.S. carriers.

I have the honour to confirm that your letter and this reply constitute an understanding between our two Governments relating to the federal responsibilities for transborder motor carrier operations as exercised in the United States by the Interstate Commerce Commission and as delegated in Canada to the motor transport boards of the provinces. This understanding shall be effective on the date of the complete lifting of the moratorium on the issue of certificates and permits to Canadian owned or domiciled carriers provided for in the Bus Regulatory Reform Act.

Accept, Sir, the renewed assurances of my highest consideration.

Yours truly,

Allan Gotlieb

Allan Gotlieb
Ambassador

Attachment F
Presidential Determination under the Bus Regulatory Reform Act of 1982

THE WHITE HOUSE

WASHINGTON

November 29, 1982

MEMORANDUM FOR THE UNITED STATES TRADE REPRESENTATIVE

SUBJECT: DETERMINATION UNDER THE BUS REGULATORY REFORM ACT OF 1982

Section 6 of the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. The Act authorized me to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof which substantially prohibits the granting of motor carrier authority to persons from the United States. I hereby determine that this sixty-day advance notification provision is not now applicable to Canada.

When I signed this Act into law on September 20, 1982, I determined that it was in the national interest to modify the moratorium by suspending it insofar as Canada is concerned, subject to certain conditions. At the same time, I instructed you, as my Trade Representative, to intensify our efforts to negotiate a fair and equitable resolution of the transborder trucking issue with Canada, and to report back to me within sixty days on those discussions. It was my expectation that such time would be sufficient for an appropriate understanding to be negotiated with Canada to allow me to completely remove the moratorium.

I am pleased that your efforts have been successful, and that an understanding between the United States and Canada has been concluded to ensure fair and equitable treatment for both Canadian and United States trucking interests on both sides of the border.

Therefore, in the further exercise of my authority under Section 6 of the Bus Regulatory Reform Act to remove in whole or in part the moratorium which prohibits issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of a contiguous foreign country, I hereby find that it is in the national interest to remove completely the moratorium for Canada.

Accordingly, you are directed to notify Congress today on my behalf that, as of tomorrow the moratorium is no longer in effect for Canada. Because of this action the Interstate Commerce Commission will now process expeditiously all outstanding applications for operating authority from Canadian owned, controlled, or domiciled firms according to the appropriate sections of the U.S. Motor Carrier Act of 1980. I should note that applications in Canada by United States firms will be similarly treated.

This determination shall be published in the Federal Register.

Ronald Reagan

Attachment G
Agenda of the U.S.-Canada Motor Carrier Consultative Group Meeting,
March 18, 1983

UNITED STATES - CAN

MOTOR CARRIER CONSULTATIVE GROUP
9:30 AM, March 18, 1983
U.S. Department of Transportation
Room 10214

AGENDA

A. Introductory remarks

B. Organizational and procedural aspects of the Consultative Group

C. Information relating to the moratorium

1. Disposition of motor carrier applications

2. Residual powers of the Interstate Commerce Commission under Ex Parte No. MC-157

3. Investment policies affecting motor carrier entry and operations.

D. Surface Transportation Assistance Act of 1982

1. New motor carrier safety/proof of financial responsibility requirements

-- Noon luncheon hosted by Judith T. Connor, Assistant Secretary -- for Policy and International Affairs

2. Fuel taxes, road use fees, and motor carrier registration

E. Other items

1. Bus Regulatory Reform Act of 1982

2. Findings of the Motor Carrier Ratemaking Study Commission

3. Status of other Canadian and U.S. regulatory reform initiatives

4. Cross-border transportation of dangerous goods

F. Closing comments

Attachment H
Report on U.S.-Canada Motor Carrier Consultative Group Meeting, March 18, 1983

United States-Canada Motor Carrier Consultative Group Meeting
March 18, 1983

Background

The Presidential Determination of November 29, 1982, which lifted the legislatively imposed two-year moratorium on Interstate Commerce Commission (ICC) grants of operating authority to Canadian owned or controlled motor carriers was based on an agreement of understanding with Canada on transborder trucking relations. Point 5 of this agreement calls for the establishment of a "consultative mechanism for resolving problems which affect either or both countries in the trucking sector." The agreement includes on the list of potential members of this consultative mechanism the following: the ICC, the Canadian Conference of Motor Transport Administrators (CCMTA), the American Association of Motor Vehicle Administrators (AAMVA), and the federal departments concerned with transportation, foreign affairs, trade and other interested agencies. The agreement suggests that the consultative group might consider problems relating to taxation, registration, and standards in addition to those arising from differences in economic regulation. On March 18, 1983, the inaugural session of the consultative group was held at the Department of Transportation in Washington, D.C. (See Attachments A, B, and C for the letter of agreement, list of participants and meeting agenda, respectively.)

Introductory Remarks

Brief opening remarks were made by Mr. Charles Swinburn and Mr. Matthew Scocozza of the United States and by Mr. Joseph Stanford of Canada. All generally agreed on the utility of the consultative group as a means of airing and resolving differences between the United States and Canada on motor carrier matters as well as a means of exploring jointly topics of mutual interest.

Organizational and Procedural Aspects of the Consultative Group

The following points were made under this agenda item:

- The consultative group will serve as an "early warning system" to alert each side of changes in policies, regulations, and practices that might affect the operations or competitive opportunities of the other country's motor carriers. The terms of reference for the group will be the five points contained in the letters of understanding between Ambassador Brock and Ambassador Gotlieb.

- The group will serve as a means of developing and exchanging data, particularly with respect to the disposition of motor carrier applications and changes in the balance of trade in trucking services.

- The group is not intended to serve as a "court of appeals" for motor carriers whose applications have been denied, although inquiries about specific cases may indeed be coordinated through the consultative group. Industry complaints will be screened by relevant government agencies before being referred to counterparts in the consultative group. Both sides expressed a willingness to exchange information and explain decisions about motor carrier applications.

- Meetings of the full consultative group will be scheduled approximately annually. Working groups will be formed as needed in specific areas, and will meet as necessary. Another meeting of the full group will be scheduled for late 1983, with exact dates depending on the status of working group efforts.

- The motor carrier industry will be invited to suggest issues for consideration by the consultative group. Motor carrier industry representatives will also be invited to participate directly in working groups as appropriate.

Information Relating to the Moratorium

Disposition of Motor Carrier Applications.

Mr. Karl Morell of the Interstate Commerce Commission described the status of applications for U.S. operating authority from Canadian owned or controlled motor carriers. The 182 Canadian applications during 1982 that had been reopened in connection with the Ex Parte No. MC-157 investigation or held up as a result of the moratorium had all been processed by February 11, 1983. Of the 182 applications, 161 (88 percent) were granted in full, 14 (8 percent) were granted in part, 4 (2 percent) were granted conditionally, and 3 (2 percent) were denied. Mr. Morell noted that during this period the grant rate for Canadian carriers' applications marginally exceeded that for U.S. carriers' applications. (See Attachment D, Applications before the ICC from Canadian Carriers.)

Mr. John Kinley of the Manitoba Motor Transport Board stated that his agency delayed processing U.S. applications when the moratorium was first imposed, but since the lifting of the moratorium his agency had completed processing all pending applications. While not having specific information on the disposition of U.S. motor carrier applications, Mr. Kinley noted that Manitoba's grant rate generally ranged from 90 percent to 95 percent and that no distinction was made between United States and Canadian motor carriers when deciding on grants of authority.

Mr. Mark Larratt-Smith of the Ontario Ministry of Transportation and Communications stated that the U.S. moratorium did not affect the manner in which Ontario authorities processed U.S. motor carriers' applications. No specific data were presented. Mr. Larratt-Smith described certain aspects of two prominent cases pending in Ontario, those of a proposed acquisition of a Canadian

carrier's authority by Roadway and a recent application for new operating authority by Yellow Freight. In the Roadway case, Mr. Larratt-Smith noted the strenuous opposition from the Ontario Trucking Association to granting the acquisition. Hearings are likely to be held in late April or early May, with a decision to follow as soon as possible. In the Yellow Freight case, Mr. Larratt-Smith described the public necessity and convenience criteria applied in Ontario to all new applicants regardless of country of domicile.

Mr. Swinburn of the United States emphasized the importance of having current and accurate information about the disposition of motor carrier applications. He explained the periodic reports the U.S. Department of Transportation is required to make to the Congress on the status of the moratorium, indicating that such information would be a major component of the reports and would help determine future U.S. actions. Mr. Kinley of Manitoba and Mr. Bellingham of Alberta explained some of the difficulties in collecting and reporting such data, in part because Canadian provinces do not process applicants by nationality. They expressed a willingness to supply pertinent information, but urged that a single set of requirements, formats, and timeframes be developed so that all information would be consistent and comparable. Mr. Swinburn agreed to provide the Canadians with a list of data elements that would be useful to include in the Department of Transportation's report to the Congress. (It was subsequently agreed to form a joint working group on data development and exchange.)

Ex Parte No. MC-157.

Mr. Morell summarized the ICC's findings in the investigation under Ex Parte No. MC-157. (See Attachment E.) The major findings included:

- The ICC has the authority to consider the issue of reciprocity in deciding on applications of Canadian motor carriers for U.S. operating authority.

- Although differences in motor carrier regulation between the United States and Canada have put U.S. carriers at a disadvantage in competing for freight between the two countries, no evidence was found to indicate Canadian provinces apply their regulations in a discriminatory fashion.

- The Foreign Investment Review Act is discriminatory on its face, but its impacts on U.S. carriers appear to be minor.

Mr. Morell stated that the ICC will continue to monitor the U.S.-Canada trucking situation so that it can take appropriate remedial action if and when it becomes warranted.

Investment Policies Affecting Motor Carriers.

Mr. Stanford of Canada stated that the Foreign Investment Review Agency (FIRA) had approved 3 motor carrier-related applications and denied none since November 1982. Mr. Stanford emphasized that FIRA implements a general Canadian investment policy, not a specific sectoral policy for motor carriers. He expressed reluctance to include deliberations about specific FIRA cases as a continuing item on the consultative group's agenda. It was agree that information on investment in trucking in Canada and the disposition of FIRA cases would be included among the data elements developed by the group, but that detailed discussions about FIRA itself would be included on the agenda only when particular trends in FIRA decisions caused concerns on the U.S. side.

Surface Transportation Assistance Act of 1982

Safety and Proof of Financial Responsibility Requirements.

Mr. Gerald Davis of the U.S. Department of Transportation, Bureau of Motor Carrier Safety (BMCS), described recent changes in U.S. law that now require Canadian and Mexican domiciled motor carriers to carry evidence of financial responsibility on board each vehicle operated in the United States. He explained that a photocopy of the forms currently required to be kept at the carrier's principal place of business, the MCS-90 or MCS-82, would be accepted as evidence of financial responsibility. (See Attachment F and Attachment G for the BMCS letter of notification and sample form MCS-90, respectively.) Mr. Larratt-Smith of Ontario noted that similar concerns about adequacy of insurance coverage have been raised periodically with respect to U.S. independent operators and non-regulated carriers operating in Ontario.

Fuel Taxes, Road Use Fees, and Vehicle Registration.

Mr. Milton Wells of the U.S. Department of the Treasury, Internal Revenue Service (IRS), summarized the recently enacted changes in the heavy vehicle road use fee. For trucks over 80,000 pounds gross vehicle weight the fee is to increase from its current level of $240 per year to $1600 effective July 1, 1984, increasing incrementally to $1900 effective July 1, 1988. The implementation schedule is delayed one year for owners of fleets with five or fewer vehicles. Vehicles traveling less than 5,000 miles per year on public highways are exempt from this fee. Mr. Wells pointed out that this fee applies to vehicles operated by Canadian and other foreign domiciled trucking firms if their vehicles are registered under the laws of any state. Specifically, Mr. Wells noted the following:

- Prorate registration of Canadian motor vehicles in the United States under the Uniform Vehicle Registration, Proration and Registration Agreement and the International Registration Plan

constitute registration for Federal heavy vehicle use tax purposes.

- Canadian-based vehicles operating under "full and free" reciprocal State-Provincial agreements not requiring registration of each other's vehicles are not liable for the heavy vehicle use fee.

- Compliance with State laws requiring special permits or identification tags for State tax purposes does not constitute registration for Federal heavy vehicle use tax purposes.

Mr. James Link of the Federal Highway Administration discussed a number of additional topics relating to the road tax and vehicle registration. He noted that the States are required to obtain proof of payment of the Federal road use tax before issuing State registrations, indicating collaboration with the American Association of Motor Vehicle Administrators (AAMVA) in organizing a workshop to evaluate how States can best meet this requirement. He also described the upcoming study of alternatives to the heavy vehicle use tax required by the section 513(g) of the Surface Transportation Assistance Act of 1982. The study is planned to be completed by the end of 1983, and will include analyses of alternatives based on vehicle size and configuration, weight, and distance traveled and provide plans for improving collection and enforcement of the tax. Canadian views on these matters were invited. Finally, Mr. Link discussed the May 1982 Cost Allocation Study which served as the basis for the new user fees in the STAA of 1982 and the December 1982 Uniformity of State Regulation Study which described the complexity of registering or certifying motor carrier vehicles for interstate operations and recommended legislation to establish national registration standards. (See Attachment H.)

Mr. Donald Bardell of the American Association of Motor Vehicle Administrators described the AAMVA's efforts over the years to develop registration reciprocity agreements among the States and Provinces. He cited the differences that led to last year's moratorium as a serious threat to the continuation of those agreements, expressing relief that a solution has been found. (See Attachment J.) Mr. Bardell offered the AAMVA's assistance in the work of the consultative group.

The Canadian representatives stated that they respected fully the right of the United States to increase and restructure its highway taxes. They expressed concern, however, about the equitability of certain aspects of the recently enacted changes. Mr. Kinley of Manitoba stated that a "flat tax" (i.e. one with a low eligibility threshold) would be inequitable for both U.S. and Canadian carriers operating internationally. A significant number of international motor carriers would be liable for two full sets of taxes, adding substantially to operating expenses. Mr. Kinley noted that this would introduce inefficiencies into international carriers' fleet utilization, inefficiencies that the two

countries' economies and motor carriers could not afford. He also noted that because of the different tax liabilities associated with the international prorate registration agreements and the "full and free" reciprocity registration agreements, not all Provinces' motor carriers would be treated alike. In general, the motor carriers of Alberta and British Columbia which operate under prorate agreements, would be liable for the road use tax, while the motor carriers of the eastern Provinces, which operate under "full and free" agreements, would not be liable. Mr. Kinley urged that a uniform method of ascribing liability for the road use tax be developed, and that it emphasize the need for efficient utilization of trucking resources as well.

Mr. Bellingham of Alberta suggested that this matter be reviewed in the context of the section 513(g) study of alternatives to the heavy vehicle use tax. Mr. Swinburn of the Department of Transportation agreed.

Other Agenda Items

Bus Regulatory Reform Act of 1982

Mr. Swinburn reviewed the major elements of the Bus Regulatory Reform Act of 1982. (See Attachment K.) Mr. Larratt-Smith indicated that the Canadians were aware of no major problems created by passage of the bill, but noted that they had not reviewed its provisions full. Mr. Bellingham inquired whether Canadian bus companies seeking to fill in their international operating authorities with U.S. domestic service would be required to pay customs duties on their vehicles, pay registration fees, and obtain work permits for drivers. The U.S. side indicated that it would check into these matters.

Findings of the Motor Carrier Ratemaking Study Commission

Mr. Swinburn summarized the Commissions's findings which supported the elimination of anti-trust immunity for collective motor carrier ratemaking. (See Attachment L.) Mr. Larratt-Smith noted that electronic data processing techniques could significantly change ratemaking and tariff filing procedures. Mr. Soroka of the Canadian Embassy noted that differences in collective ratemaking policies had created certain potential legal problems in the railroad industry, and requested to be advised of any potential similar problems related to trucking.

Status of Other U.S. and Canadian Regulatory Reform Initiatives

Mr. Swinburn briefly summarized prospects for further liberalization and streamlining of economic regulation of the trucking industry in the United States. He noted that the Administration was preparing a legislative proposal in this area.

Mr. Kinley of Manitoba observed that all Canadian Provinces are conducting reviews of their motor carrier regulatory regimes. He

stated that Manitoba was currently analyzing a series of economic, safety and tax issues relating to the motor carrier industry. He indicated that the Canadian Conference of Motor Transport Administrators (CCMTA) was planning to hold a national symposium on regulatory reform during the summer of 1983. He offered to invite representatives of the United States to participate.

Mr. R.D. McIntosh of New Brunswick stated that New Brunswick and other Atlantic Provinces were reviewing their regulatory regimes, and as a rule could be expected to act in concert on any regulatory reform initiatives. He commented that the Atlantic Provinces were considering a range of regulatory reforms including modest deregulation. He estimated that it would be approximately two years before any significant regulatory reforms could expect to be implemented.

Mr. Bellingham of Alberta noted that intra-provincial trucking operations are already deregulated in that Province. He stated that more liberal inter-provincial entry policies are in the process of being adopted for an expanding list of commodities.

Mr. Rene Vincent of Quebec stated that his Province has begun granting broader operating authority than in the past and is permitting carriers to "clean up" their existing authorities (i.e. to remove certain geographic and commodity restrictions).

Mr. Larratt-Smith of Ontario summarized the extensive review of the trucking industry being carried out under the Public Commercial Vehicle (PCV) Act. The final report of the PCV review committee is due in April. He describe the likely thrust of the comittee's policy recommendations as follows:

- The "public necessity and convenience" test should be replaced by a more objective one focused on "fitness."

- Any "fitness" test should include consideration of financial abilities and operational competence.

- The effect of new entrants on the total market rather than on individual carriers should be considered.

- A simplified system for operating authority specifications and vehicle registration should be developed, along with the means to assure compliance by all commercial vehicles.

Mr. Larratt-Smith noted that U.S. carriers desiring to operate in Ontario would have to comply with whatever reforms might be implemented. He also stated that there is a possibility that U.S. carriers might have to agree to employ a specified number of Ontario workers if they derive revenue from intra-provincial operations. (See Attachment M.)

Cross-Border Transportation of Hazardous Materials

Mr. Larratt-Smith noted that Canada was developing a uniform system for placarding and handling of dangerous goods. He expressed that differences between the Canadian and U.S. systems could lead to confusion and inefficiencies. He suggested that a reciprocity agreement in this area could prove useful. He noted, however, the technical nature of the subject matter, and stated that he believed the consultative group might serve a facilitative role rather than a substantive technical role in helping achieve an agreement.

Mr. Alan Roberts of the Department of Transportation, Office of Hazardous Materials Regulation, described past and current relationships with Canada with respect to regulation of motor carrier transportation of hazardous materials. He noted the highly technical nature of the regulations, expressing a willingness to continue to cooperate with Canada to resolve any problems created by differences between the two countries procedures and standards. Both sides agreed that developments in this area should be reviewed at the next consultative group meeting.

Closing Comments

Both sides agreed that the inaugural meeting of the consultative group had been informative and useful. It was further agreed that a second meeting of the full group would be scheduled for late in 1983 and that working groups on data, and taxation and registration would be formed as soon as possible.

Attachment J
Chronology of Events — U.S.-Mexico Trucking

U.S.- Mexico Trucking

Chronology of Events

May 29, 1981 — DOT files petition to intervene in the Matter of Permissonerios de Express y Carga S.A. de C.V., Docket No. MC 141212 (Sub-No. 1F), urging the ICC to consider reciprocity as well as the basic goals of competition and efficiency in determining whether to grant operating authority to Mexican applicants.

September 21-22, 1981 — First session of the U.S.-Mexico Joint Commission on Commerce and Trade (JCCT), Mexico City. DOT presentation on the issue of U.S.-Mexico trucking.

September 23, 1981 — Meeting between DOT officials and Mexican Secretariat of Communications and Transportation (SCT) officials, Mexico City.

October 1981 — Transportation Working Group (TWG) formed as part of JCCT; DOT and USTR co-chair.

October 19, 1981 — ICC consolidated pending Mexican motor carrier applications for ruling on "whether a certificate should be issued . . .when the Mexican government bars American carriers from operating in Mexico."

October 27, 1981 — Secretary Lewis meets with SCT Secretary Mujica, Mexico City. Secretary Mujica advises that Mexico not likely to change its policies.

November 13, 1981 — DOT files comments on consolidated Mexican motor carrier applications, urging the ICC to take reciprocity into account.

December 7-8, 1981 — Meeting of the TWG and Mexican officials in Laredo, TX, and Nuevo Laredo, Tamaulipas.

February 10-11, 1981 — Visit of U.S. TWG to San Diego and Tijuana to observe trucking operations and meet with representatives of U.S. Customs, California's DMV, Office of Business Industrial Development, PUC, Highway Patrol and Assembly.

February 12-14, 1982 — DOT, USTR, DOC officials meet with SCT officials to prepare joint report on status of trucking issue, Mexico City.

February 15-16, 1982	JCCT Technical Secretariat meeting, Cozumel.
April 19, 1982	Secretary Lewis meets with SCT Secretary Mujica, Washington. Secretary Mujica reiterates Mexican unwillingness to grant U.S. carriers increased access to Mexican market.
July 8-9, 1982	TWG of JCCT meets in Washington to discuss motor carrier access and other issues. No significant change in Mexican position against increased access for U.S. carriers to Mexico.
September 20, 1982	Bus Regulatory Reform Act signed into law. Section 6(g) imposes a 2-year moratorium on new grants of ICC operating authority to Mexican owned or controlled motor carriers.
January 6, 1983	Surface Transportation Assistance Act of 1982 signed into law. Section 406 (b) requires most for-hire motor carriers and some private motor carriers domiciled in Mexico to carry on board each vehicle operated in the United States proof of financial responsibility.
April 26-28, 1983	Cooperative effort among DOT, ICC and Customs to enforce recent changes in motor carrier laws and regulations at San Diego and Calexico, California, and Nogales, Arizona. 101 vehicles denied entry to the United States for failure to carry proof of financial responsibility.
May 2, 1983	Temporary restraining order issued in Federal District Court in Brownsville, TX, prevents BMCS from fully enforcing new proof of financial responsibility requirements. Enforcement activities scheduled for May 3-5 in Brownsville, Hidalgo, Laredo and El Paso are temporarily postponed.
July 21, 1983	JCCT Technical Secretariat meets in Washington. Mexican officials advised of continuing U.S. concerns about trucking and desire to schedule meeting of Transportation Working Group to discuss trucking issues.

Attachment K
Report of the Transportation Working Group to the U.S.-Mexico Joint Commission on Commerce and Trade, July 9, 1982

REPORT OF THE TRANSPORTATION WORKING GROUP TO THE

U.S.-MEXICO JOINT COMMISSION ON COMMERCE AND TRADE

WASHINGTON, D.C.

JULY 9, 1982

INTRODUCTION

The Transportation Working Group (TWG) of the U.S.-Mexico Joint Commission on Commerce and Trade met in Washington on July 8 and 9, 1982 to continue the exchange of information and to make specific recommendations to the full Commission for consideration at the political level for improving bilateral trucking between Mexico and the United States.

Previously, the TWG met in Laredo/Nuevo Laredo on December 28, 1981 (Attachment 1); U.S. members of the TWG made a fact-finding trip to San Diego, California on February 10, 1982 (Attachment 2); and the TWG met in Mexico City on February 12 in preparation for the second meeting of the Technical Secretariat.

The Washington meeting was cordial with each delegation stating its positions forthrightly. The results of the discussions on the TWG's eight-point work program can be summarized as follows:

I. CUSTOMS

The TWG was pleased to note positive developments which have been achieved by Mexican Customs in expediting the movement of cross-border

traffic since its first joint meeting at the U.S.-Mexican border in ~~December 1981~~.

The Mexican Delegation described some of the more significant aspects of the new General Customs Law and its implementing regulations that went into effect on July 1, 1982. The new law is intended to expedite the clearance of merchandise through greater ~~standardization~~ and ~~simplification~~ of procedures. ~~For example,~~ an importer established in Mexico and duly registered with Customs utilizing containers can obviate lengthy clearance procedures at the port of entry either by being exempted from physical inspection to determine the nature of the goods or by being inspected at the importer's domicile.

U.S. Customs officials shared information with their Mexican colleagues on experimental automatic data processing systems being used at some U.S. ports.

Owing to the technical nature of much of the customs matters under discussion and the long-standing cooperation between U.S. and Mexican Customs authorities, the TWG was pleased to support the U.S.-Mexico Customs Conference and recognized it as the appropriate forum for the discussion of strictly customs

matters. However, the TWG did reaffirm its determination to continue discussing customs issues which affect cross-border commercial traffic.

RECOMMENDATIONS

1) The TWG recommends that U.S. and Mexican Customs authorities exchange information on new automated cargo processing systems (i.e., BBEETS, ACCEPT, ABI) currently being used in the United States to determine if any might be applicable to Mexico.

2) The TWG recommends that the JCCT congratulate Mexico on the new improved procedures contained in Mexico's July 1, 1982 General Customs Law and its implementing regulations.

3) The TWG recommends that U.S. and Mexican Customs authorities continue working toward greater coordination in hours of operation.

4) The TWG recommends that U.S. Customs consider opening Brige Two in Laredo, Texas to truck traffic.

5) The TWG recommends that U.S. Customs continue its efforts to relocate personnel to the busiest U.S.-Mexican border ports.

II. TRAILERS

Discussions focused on past delays in returning trailers and the role of the "Centrales" in cross-border trade. Both the United States and Mexico recognized that the return of trailers had improved significantly. This is mainly the result of the decrease in the volume of grain traffic which in turn reduced the amount of traffic diverted from the railroads to highway transportation. Other important factors discussed are: a) increased trucking capacity in Mexico; b) improved services being provided by the "Centrales"; and c) the general economic downturn in both the U.S. and Mexico that has caused a drop in the total volume of import-export traffic.

The Mexican Delegation explained its government's program to establish "Centrales" at all border-crossing points in order to facilitate cross-border traffic. The U.S. Delegation agreed that the performance of certain administrative functions by the "Centrales" could prove beneficial in facilitating cross-border operations.

CONCLUSION

The Transportation Working Group will continue to analyze and exchange information on problems associated with the return of empty trailers.

III. SERVICES

The U.S. Delegation pointed out that the Mexican share of the provision of customs brokerage and freight forwarding services along the border has been constantly increasing; 30-40 percent of these services in U.S. border cities and 100 percent in Mexico are now provided by Mexican firms operating on both sides of the frontier. An expanding network of Mexican brokers, freight forwarders, and warehousers is reaching further into the U.S., resulting in inequities for U.S. firms which are limited to U.S. operations. U.S. freight forwarders question why they are not permitted to operate in Mexico while Mexican firms provide cross-border service.

The U.S. delegation made four proposals, the first three of which are unilateral: 1) require all U.S. Shipper's Export Declarations to be signed by either the original U.S. exporter, a licensed U.S. broker, or a resident U.S. freight forwarder; 2) require Mexican brokers operating in the U.S. to hold a U.S. license; 3) explore the feasibility of licensing all freight forwarders operating in U.S.; and 4) explore the possibility of developing reciprocal licensing programs with the Government of Mexico for all freight forwarders and customs brokers.

The Mexican Delegation responded that it recognizes and would respect U.S. sovereignty with respect to the three unilateral initiatives.

With respect to the fourth proposal -- joint licensing -- the Mexican delegation pointed out that the new Mexican General Customs Law (July 1982) restates a long-standing policy that customs brokers must be Mexican nationals by birth (Art. 143) and that permission to engage in brokerage activities is granted on a personal, individual basis and is non-transferable.

The U.S. Delegation requested further information concerning Mexican laws and regulations regarding "general" and customs-clearing warehousing and the Mexican Delegation offered to provide this information.

The TWG took note of the concern of the U.S. Delegation over the present system of customs brokerage, freight forwarding, and warehousing at the border and of the intention of the U.S. Delegation to bring this to the attention of the Technical Secretariat of the JCCT to determine the appropriate forum for further consideration.

The TWG discussed the many advantages in facilitating the shipment of goods from one country to another resulting from the use of a single bill of lading.

RECOMMENDATION

The TWG recommends that both governments encourage shippers in their respective countries to use a single bill of lading based

on the UN Layout Key.

IV. ACCESS

The Transportation Working Group reviewed the results of extensive analyses of conditions existing at the principal U.S.-Mexico border-crossing points. It was noted that the extent of motor carrier operations in paired cities and within the "border zone" varied significantly from point to point. (See Attachments 3 and 4.) The U.S. Delegation stated that this lack of uniformity creates uncertainty for motor carriers and presents an obstacle to increased trade in general. In two Mexican border cities (Nuevo Laredo and Ciudad Juarez), U.S. short-haul carriers are operating within the urban areas of the "border zone". In all other Mexican border cities, U.S. carriers are limited to interchange in Customs holding areas. All U.S. long-haul carriers are barred from Mexico. Mexican long-haul carriers must have ICC authority to carry regulated commodities in the United States.

The Mexican Delegation indicated that access for U.S. trucks to the urban areas in the "border zone" is permitted by the President Adolfo Ruiz Cortines Decree of October 6, 1955 (Attachment 5). The decree states that, in accordance with appropriate legal precepts, measures shall be taken to give U.S.-registered for-hire vehicles treatment equal to that granted to

Mexican-registered for-hire vehicles operating in the urban areas of the border cities.

The TWG reviewed the question of more extensive motor carrier access to the U.S. and Mexican interiors. The U.S. Delegation expressed its concern over the lack of equity in the current imbalance in mutual access and described the provisions of H.R. 3663 (Attachment 6), soon to be enacted into law, which imposes a two-year moratorium on grants of operating authority to Mexican (and Canadian) motor carriers. The U.S. Delegation also indicated that, as necessary, it will evaluate other potential unilateral actions to address the wide divergences in U.S. and Mexican motor carrier policies.

The Mexican Delegation responded by reiterating Mexico's legal prohibition -- Law of General Means of Communications (1948) and Foreign Investment Law (1973) -- against permitting foreign-owned tractors and drivers to operate beyond the "border zone", noting that no changes can be expected. Mexico restated its original position that full reciprocity in trucking is not open to discussion and that it respects the sovereign right of the United States to restrict Mexican motor carriers operating in that country.

The existence of informal understandings between some Mexican and U.S. border states, such as the 1956 Texas "understanding" as revised, was also discussed. The TWG agreed that such

"understandings" lack any basis in law, are unenforceable, and should not be entered into. For Mexico, these "understandings" are unconstitutional.

RECOMMENDATIONS

1) The Transportation Working Group recommends that motor carriers receive the full extent of access to cities on both sides of the border permitted under the laws, regulations, and decrees in effect in the United States and Mexico and that measures should be taken by the competent Federal officials in both countries to enforce this right of access and to assure that local policies and practices do not thwart nor contravene any Federal initiatives or legislation on this subject.

2) The TWG recommends that officials in border states in both the United States and Mexico be discouraged from entering into any separate "arrangements" regarding trucking which is not fully in accord with the respective constitutional and Federal laws and regulations of each country.

Attachment L
Report on Motor Carrier Checks at the U.S.-Mexico Border

U.S. Department of Transportation
Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

MAY 12 1983

MEMORANDUM

SUBJECT: Motor Carrier Checks at U.S.-Mexico Border

FROM : Arnold Levine, Chief
International Trade Division

TO : Distribution

Background

During the week of April 25, 1983, the Department of Transportation (DOT), the Interstate Commerce Commission (ICC), and the United States Custom Service (USCS) cooperated in a series of motor carrier checks at San Ysidro and Calexico, California, and Nogales, Arizona. These checks were to enforce recently enacted legislation which imposes certain requirements on Mexican carriers operating in the United States. Specifically, the Bus Regulatory Reform Act of 1982 imposed a two-year moratorium on the issuance of ICC operating authority to any motor carrier domiciled in Mexico or owned or controlled by a Mexican citizen. Further, the Surface Transportation Assistance Act of 1982 required most for-hire motor carriers and some private motor carriers domiciled in Mexico (and Canada) to carry on board each vehicle operated in the United States evidence of financial responsibility (insurance).

Carriers failing to carry proper on-board proof of financial responsibility are to be denied entry to the United States. Vehicles failing to meet DOT safety requirements may be placed out of service. The ICC is authorized to impose fines or seek injunctions against carriers operating without proper ICC authority. See Attachments A, B, C, D, E, and F.

The objectives of the checks were to assure that:

-- Mexican trucks entering the United States comply with U.S. safety regulations and do not present a hazard to the motoring public;

-- Mexican motor carriers maintain adequate insurance coverage on each vehicle operated in the United States;

-- the moratorium imposed by the Congress on new grants of ICC operating authority to Mexican motor carriers is not thwarted by illegal operations;

-- Customs inspectors have an opportunity to work first hand with DOT and ICC field staff before undertaking independent enforcement of the financial responsibility requirements; and

-- up-to-date information is available for a report to the Congress on developments in this area.

The checks were conducted from 8:00 AM to 4:00 PM on April 26, 27, and 28, 1983.

San Ysidro (San Diego)

Physical Layout and Operations

The San Ysidro commercial gate and import lot is a single fenced in area with little room for maneuvering by large trucks and trailers. See figure 1. Approximately 300 commercial vehicles per day enter the United States through this gate.

The commercial gates is open from 8:00 AM to 4:00 PM daily. The passenger gates are located approximately 1/4 mile east of the commercial gate. Empty commercial vehicles have the option of using either the passenger or commercial gates and therefore may enter the United States 24 hours per day. Trucks hauling perishable commodities may enter through the passenger gates after the commercial gate closes at 4:00 PM.

Check Procedures

Checks were carried out by three DOT and two ICC investigators. Inbound trucks were screened at point A in figure 1 by one DOT and one ICC investigator to determine the nature of the carriage (for-hire vs. private, regulated vs. exempt) and whether proof of financial responsibility was on board when required. Trucks without the required proof were sent to point B for additional questioning and to have the Form MCS 63 completed. Trucks being denied entry were routed around the docks and back through the gate to Mexico. All DOT and ICC checks were done before the USCS officially logged Mexican vehicles and their loads in. DOT investigators did not check for vehicle safety compliance. Instead, this was being done by California Highway Patrol inspectors stationed immediately outside the import lot at point C.

Results

Preliminary data show 807 vehicles entering the United States through the commercial gate during the three-day period. Most were not required to meet U.S. financial responsibility requirements (e.g. were private carriers or operated vehicles less than 10,000 pounds GVWR). A total of 73 MCS 63s were issued; 32 vehicles were denied entry to the United States. The remaining 41 carried proof of financial responsibility, but not on the proper form. They were cited on the MCS 63 for "Form and Manner" and were permitted to proceed through Customs clearance.

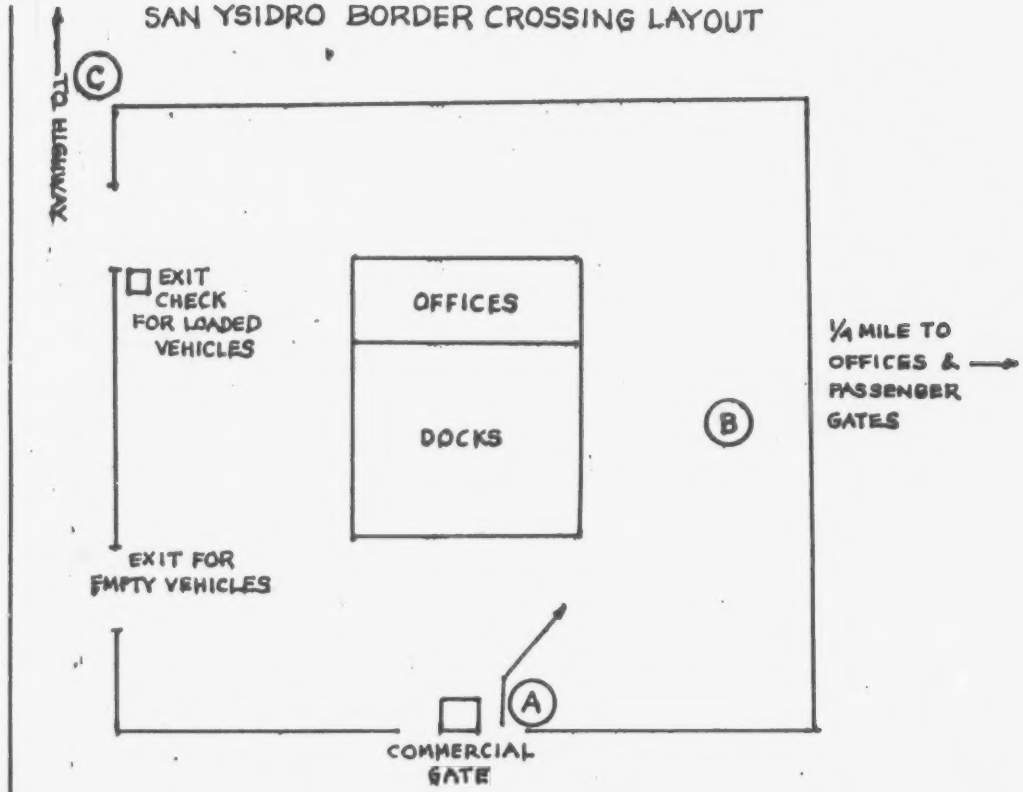

SAN YSIDRO BORDER CROSSING LAYOUT
C
TO HIGHWAY
EXIT CHECK FOR LOADED VEHICLES
OFFICES
DOCKS
B
¼ MILE TO OFFICES & PASSENGER GATES
EXIT FOR EMPTY VEHICLES
A
COMMERCIAL GATE

FIGURE 1

Calexico

Physical Layout and Operations

The facilities at the Calexico commercial border crossing site are modern and spacious. See figure 2. The primary station is connected to the large import lot by a road approximately 500 feet in length. A large impound lot is located adjacent to the commercial gate. Approximately 150 loaded trucks pass through this gate per day. The commercial gate is open from 8:00 AM to 4:00 PM daily. The passenger gates are located immediately beyond the fenced in import lot and docks. Empty commercial vehicles may use the passenger gate 24 hours per day. Trucks hauling perishables may use the passenger gates after 4:00 PM.

Check Procedures

Checks were carried out by two DOT and two ICC investigators. Inbound trucks were screened at point A in figure 2 to determine the nature of the carriage and whether financial responsibility requirements were applicable. In addition, a quick check was made to determine if an in-depth safety inspection should be conducted. Trucks without the required proof of financial responsibility or those evidencing potential safety defects were sent to point B for further questioning, completion of form MCS 63, or further safety inspection, as necessary. Vehicles being returned to Mexico for failure to carry proper on board proof of financial responsibility were turned at point B. Vehicles placed out of service for safety defects were parked in the impound lot at point C.

Results

Preliminary data show 559 vehicles passing through the commercial gate during the three-day period. Most were determined not to be required to meet the financial responsibility requirements. A total of 31 MCS 63s were issued; 14 vehicles were denied entry to the United States.

Nogales

Physical Layout and Operations

The commercial border crossing facilities at Nogales are modern and spacious. See figure 3. A short roadway connects the primary station at the commercial gate with the large fenced import lot. Empty vehicles may proceed through to the public highway without being routed through the import lot. Approximately 250 vehicles pass through the commercial gate daily, although significant seasonal variations occur.

The commercial gate is open from 9:00 AM to 5:00 PM daily, but as a rule will stay open later to accommodate trucks that are waiting for clearance. The passenger gates are located more than a mile from the commercial facility. Empty trucks may

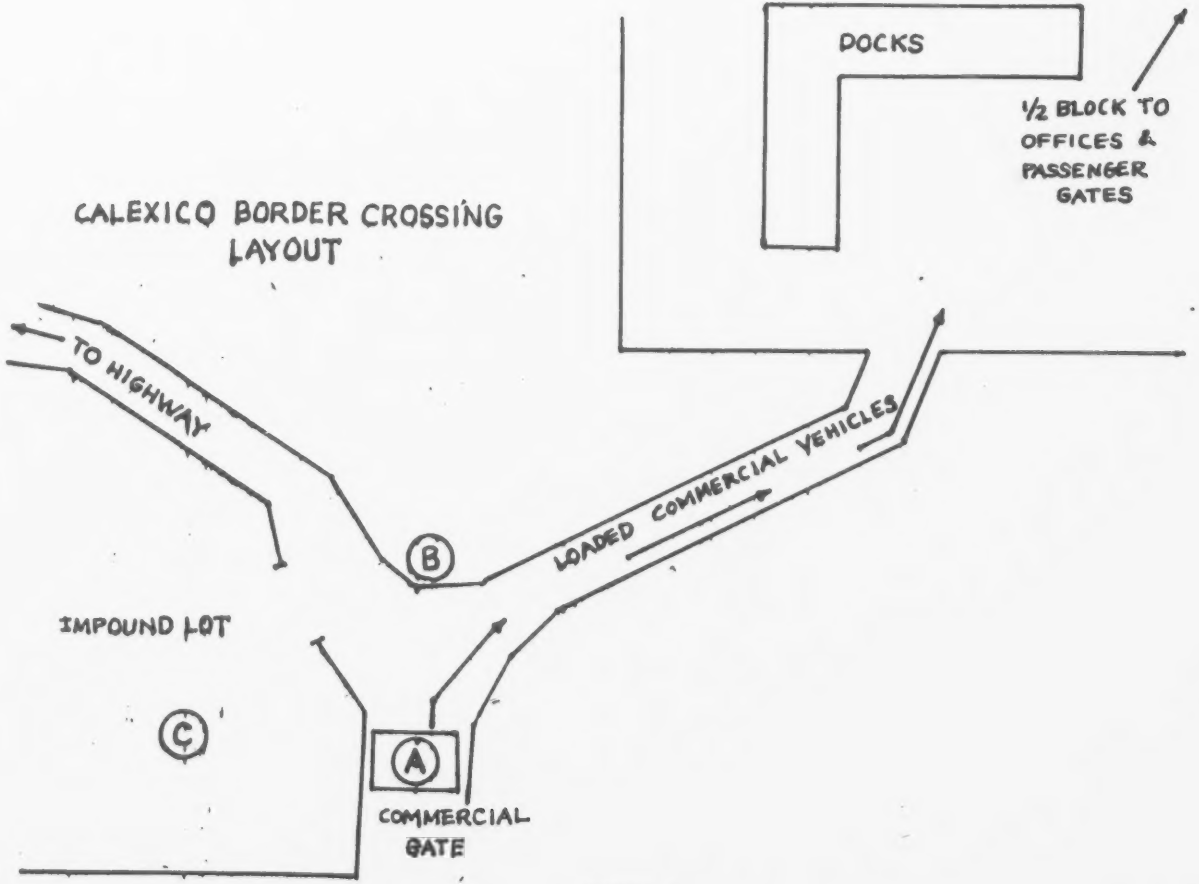

CALEXICO BORDER CROSSING
LAYOUT
DOCKS
½ BLOCK TO
OFFICES &
PASSENGER
GATES
TO HIGHWAY
LOADED COMMERCIAL VEHICLES
B
IMPOUND LOT
C
A
COMMERCIAL
GATE

FIGURE 2

enter through the passenger gates at any time. Because of this port's policy of keeping the commercial gate open until all trucks have cleared, there is no need to route perishables through the passenger gates after the normal 5:00 PM closing time.

Check Procedures

Checks were carried out by three DOT and two ICC investigators. Inbound trucks were screened by the ICC investigators at point A in figure 3 to determine the nature of the carriage. The drivers of trucks determined to be for-hire were directed into the import lot with instructions to report to one of the DOT investigators at points B for clearance. Dispatchers for U.S. customs brokers assisted drivers in organizing insurance, medical, and registration papers for presentation to DOT investigators. DOT investigators marked drivers' papers "OK" or "Not OK." Vehicles cleared by DOT then proceeded with customs processing. The Customs inspector at the exit gate checked for the DOT clearance mark on drivers' papers and routed vehicles with a "Not OK" mark back to Mexico. No safety inspections were performed at Nogales.

Results

Preliminary data show 558 vehicles passing through the commercial gate during the three-day period. Most were determined not to be required to meet the financial responsibility requirements. A total of 95 MCS 63s were issued; 55 vehicles were denied entry to the United States.

Texas Border Crossing Checks

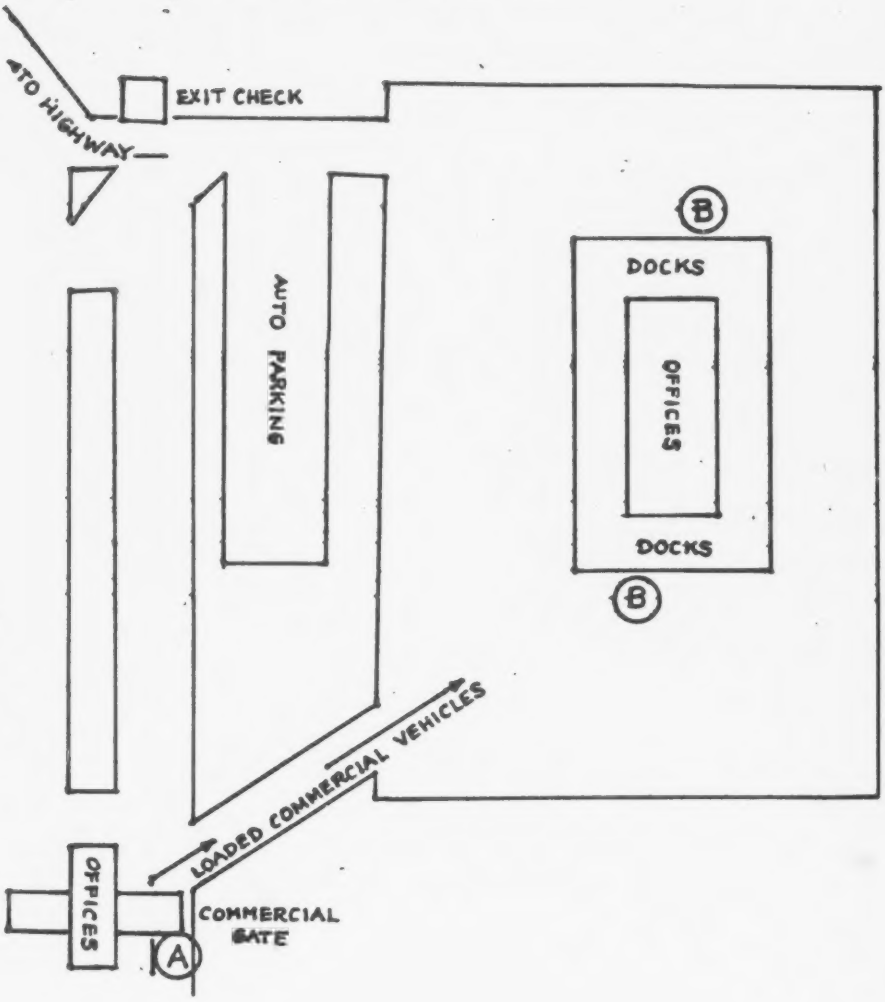
Checks similar to those described above were scheduled to be conducted in Brownsville, Hidalgo, Laredo, and El Paso, Texas, during the week of May 2, 1983. Parties involved in the distribution of fruit and vegetables through the port of Hidalgo sought and were granted a temporary restraining order in the United States District Court for the Southern District of Texas, postponing enforcement of the relevant DOT regulations for one day. See Attachment G. Based on this action and additional concerns raised by local officials and business community spokespersons, all checks along the Texas border for compliance with the financial responsibility requirements were cancelled. They will be rescheduled for some time in June.

General Observations

Although the border checks can be termed a success to the extent they helped inform Mexican motor carriers about U.S. financial responsibility requirements and indicated a resolve on the U.S. Government's part to enforce them, they also pointed out certin difficulties associated with enforcement. These are summarized below.

FIGURE 3

NOGALES BORDER CROSSING LAYOUT



- Not all vehicles must meet the requirements. In general, vehicles engaged in private carriage and vehicles under 10,000 pounds GVWR are the major categories in this respect. Mexican motor carriers were quick to learn of these two exceptions. Some drivers claimed to be operating vehicles in private carriage, although evidence to that effect was not clear. Some U.S. officials speculated that certain shipments would be broken down into lots small enough to fit in vehicles of less than 10,000 pounds GVWR to avoid the need to have more extensive insurance coverage.

- There are not enough enforcement personnel to cover all gates at all times, even during concentrated enforcement exercises. DOT and ICC investigators worked only at the commercial gates during normal duty hours. Customs policy, however, permits empty commercial vehicles to enter through the passenger gates 24 hours per day, and generally permits perishables to enter through the passenger gates after the commercial gates are closed. Until each Customs inspector receives training in enforcement of the financial responsibility requirements, many vehicles will be able to enter the United States without the threat of being checked and denied entry.

- The form MCS 90 can be readily acquired and/or forged. With pressures to process commercial traffic as rapidly as possible, there is little time to scrutinize the MCS 90 and virtually no opportunity, except on a very limited spot basis, to check the validity of the information on the form. The quickness with which certain Mexican vehicles and drivers that had initially been denied entry to the United States returned with a filled in MCS 90 made most DOT investigators suspicious on this point. The Bureau of Motor Carrier Safety is following up on several of these cases.

- Some Mexican motor carriers carried evidence of financial responsibility in a form other than the MCS 90 or MCS 82, (e.g. endorsement of insurance policy, State insurance form). In some cases, Mexican motor carriers showing an alternate form of proof of financial responsibility were permitted to enter the United States; in other cases they were not. Enforcement generally will be complicated and weakened to the extent alternate forms are accepted as proof of financial responsibility.

- At each site, Mexican motor carriers being denied entry to the United States requested permission to leave trailers behind in the import lot so that they could be picked up later (ostensibly by a U.S. carrier or a Mexican carrier in compliance with the law). In all but one case this was not permitted. DOT investigators deferred to Customs

officials on this matter. It was the consensus among those officials that such trailers should not be permitted to stack up in the import lot. In addition to potential congestion problems this might create, some U.S. officials speculated that some Mexican drivers turned back at the commercial gate could simply return through the passenger gates as an empty vehicle, enter the import lot, and hook up to the trailer without being detected by DOT investigators.

Conclusions

- O Full time, 100 percent enforcement of the proof of financial responsibility requirement by DOT investigators is not practicable or cost efficient. Periodic, unannounced checks at U.S.-Mexico border crossing points by joint DOT-ICC teams, however, can be an effective and highly visible means of enforcing proof of financial responsibility requirements as well as a means of acquainting Mexican motor carriers with those requirements.

- O The basic financial responsibility requirements themselves apply to only a minority of Mexican commercial vehicles crossing the border. This complicates enforcement and provides numerous opportunities for Mexican motor carriers to claim exemptions that will be difficult for untrained Customs inspectors to refute.

- O Periodic, intensive checks by DOT investigators can be made without significantly disrupting the flow of traffic across the border.

- O Customs inspectors, once trained, can help enforce the proof of financial responsibility requirements on a day-to-day basis without disrupting the normal flow of commercial traffic.

- O Customs brokers and their dispatchers, by helping to organize all relevant documentation, can greatly facilitate enforcement of the proof of financial responsibility requirements.

Recommendations

- O Customs should work with the Bureau of Motor Carrier Safety to schedule as soon as possible on-site training for Customs inspectors on enforcement of the proof of financial responsibility requirements.

- O DOT, ICC, and Customs officials should review carefully the various procedures followed at the different sites during this enforcement exercise to assure that a set of consistent, efficient, and effective procedures is adopted for future activities in this area.

Attachment M
Temporary Restraining Order Relating to Enforcement of Financial Responsibility Requirements

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
MAY 2 1983
JESSE E. CLARK, CLERK
BY DEPUTY: B Baker

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

McMANUS PRODUCE CO.; LaMANTIA CULLUM, COLLIER & CO. INC., FLORES FINAS, INC. d/b/a BANNWORTHS INTERNATIONAL; CAIN CUSTOM BROKERS, TEDDY BERTUCA CO., DUDA & SONS, GULF DISTRIBUTORS, ELMORE & STAHL, INC., MARVIN SCHWARZ PRODUCE, and GRIFFIN & BRAND CO. :

VS. :

ELIZABETH DOLE, SECRETARY OF TRANSPORTATION OF THE UNITED STATES and DONALD REGAN, SECRETARY OF THE TREASURY OF THE UNITED STATES :

CIVIL ACTION NO. B-83-123

ORDER

BE IT REMEMBERED that on the 2nd day of May, 1983 came on to be heard Plaintiff's Motion for Stay, and it appearing to the Court that because of the perishable nature of the fruits and vegetables being imported and the irreparable harm which will probably result to Plaintiff's, consumers and Mexican sellers, justice requires that the status and rights of the parties be preserved;

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the effective date of the enforcement of the regulations set out in 49 C.F.R. Part 387 issued by the Department of Transportation referred to and implemented by letter from the District Director of Customs dated April 27, 1983 is hereby postponed and stayed as follows:

(1) Until 8:00 a.m. May 4, 1983, the Plaintiff may continue to import fruits and vegetables from Mexico as they have been doing, provided public liability insurance is afforded each

incoming truck in an amount not less than the minimum limits of such insurance required by the State of Texas, such insurance to be obtained in the same manner as is presently being done by Plaintiffs.

(2) Thereafter, until further order of this Court the Plaintiff may continue to import fruits and vegetables from Mexico as they have been doing, provided public liability insurance is afforded each incoming truck in an amount not less than $500,000.00, such insurance to be obtained in the same manner as is presently being done by Plaintiffs.

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs' Motion for Stay shall be heard on the 6th day of May, 1983, at 8:30 o'clock a.m. at the Federal Courthouse, Federal Building, Brownsville, Texas.

SIGNED this 2nd day of May, 1983.

JUDGE PRESIDING

TRUE COPY I CERTIFY
ATTEST:
JESSE E. CLARK, Clerk
By
Deputy Clerk

Attachment N
Stipulations Relating to Compliance with and Enforcement of Financial Responsibility Requirements

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
AUG 4 1983
JESSE E. CLARK, CLERK
BY DEPUTY

McMANUS PRODUCE CO.; LaMANTIA CULLUM, COLLIER & CO., INC.; FLORES FIÑAS, INC., d/b/a/ BANNWORTHS INTERNATIONAL; CAIN CUSTOM BROKERS; TEDDY BERTUCA CO.; DUDA & SONS; GULF DISTRIBUTORS; ELMORE & STAHL, INC.; MARVIN SCHWARZ PRODUCE; and GRIFFIN & BRAND COMPANY	$	
VS.	$	C.A. NO. B-83-123
ELIZABETH DOLE, SECRETARY OF TRANSPORTATION OF THE UNITED STATES and DONALD REGAN, SECRETARY OF THE TREASURY OF THE UNITED STATES	$	

ORDER

On the 4th day of August, 1983, came on to be considered by the Court the Stipulation of the parties on file herein, and based upon such Stipulation IT IS ORDERED by the Court that:

1. As used herein, the following terms have the following meanings:

   a. "Importer Plaintiff" means any plaintiff other than Cain Custom Brokers.

   b. The "Sheds" are certain produce sheds which the Importer Plaintiffs maintain on the United States side of the International Border in the Rio Grande Valley of Texas.

TRUE COPY I CERTIFY
ATTEST:
JESSE E. CLARK, Clerk
By _____
Deputy Clerk

c. A "Regulated Vehicle" is any motor vehicle used by a for-hire Mexican motor carrier operating motor vehicles transporting property in interstate or foreign commerce (see 49 C.F.R. § 387.3(a)) but does not include any motor vehicle within the meaning of 49 C.F.R. § 387.3(c).

d. "Form MCS 90" means Illustration 1 to 49 C.F.R. Part 387.

2. The requirements of 49 C.F.R. Part 387 are deemed to have been fully complied with as to any Regulated Vehicle entering the United States from Mexico for the purpose of transporting produce to any of the Sheds, if

a. There is issued a Master Policy, which may not be cancelled with less than 35 days notice, and which provides public liability insurance in a least the amounts required by 49 C.F.R. Part 387.9, as amended from time to time (the "Master Policy").

b. The coverage of any such Master Policy extends to such Regulated Vehicle during the period of time that such Regulated Vehicle is in the United States and 49 C.F.R. Part 387 is applicable to it, however short or long that period of time may be.

c. The extension of coverage of such a Master Policy to such Regulated Vehicle is evidenced by a properly completed Certificate of Insurance and Form MCS 90,

both of which have been placed aboard the Regulated Vehicle before it leaves the Customs compound. The Certificate of Insurance must be substantially in the form attached hereto as Exhibit 1 and will set forth, in the space marked "Name of Insured," the name of the motor carrier operating the vehicle during the time specified in the certificate. The same name must be set out in the space marked "Issued To" on the Form MCS 90 placed aboard the vehicle.

3. Except as ordered herein, this case is dismissed without prejudice and without costs.

SIGNED this 4th day of August, 1983.

U.S. DISTRICT JUDGE

This Certificate forms a part of Policy No. _____

issued to _____

at its Agency located at _____

and is effective from _____ at _____ AM _____ PM

ITEM 1. Name of Insured _____

Address _____

Port of Entry _____

ITEM 2. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premiums charge or charges. The limit of the Company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

Coverages	Limits of Liability	Premiums
Bodily Injury Liability	COMBINED SINGLE LIMIT	
Property Damage Liability		
	Total	

ITEM 3. Description of the automobile:

Year Model	Trade Name	Model	Motor Serial No.

ITEM 4. Use: The purpose for which the automobile is to be used is Commercial. The term "Commercial" is defined as used principally in the business occupation of the Named Insured as stated in ITEM 1.

ITEM 5. The insurance is issued to comply with Sections 29 and 30 of the Motor Carrier Act of 1980 and endorsement MCS 90 is attached.

ITEM 6. Insurance afforded hereunder is restricted to a (24) hour period from the effective date and time shown hereon.

The following endorsements attached to this policy are applicable this certificate: _____

AGENTS PHONE NO. _____ By _____

Duly Authorized Representative

AUTO-787 McManus Produce Co. v. Dole, C.A.No. B-93-123-Order-Exh. 1

Mr. SUNIA. Please proceed.

TESTIMONY OF PETER J. BAISH, ASSISTANT REGIONAL COMMISSIONER FOR OPERATIONS, PACIFIC REGION, U.S. CUSTOMS SERVICE, ACCOMPANIED BY ARNOLD LEVINE, CHIEF, INTERNATIONAL TRADE DIVISION, DEPARTMENT OF TRANSPORTATION; AND MARIAN BARELL, OFFICE OF THE SPECIAL TRADE REPRESENTATIVE

Mr. BAISH. Mr. Chairman, I'll begin. My name is Peter Baish. I am the Assistant Regional Commissioner for operations of the Pacific Region of the U.S. Customs Service.

Mr. Chairman, and members of the subcommittee, I appreciate the opportunity to represent the U.S. Customs Service relating to the admission of foreign motor carriers into the United States. The Surface Transportation Act of 1982 charges the Secretary of the Treasury with the responsibility to enforce the requirement that certain trucks have in the cab a certificate of financial responsibility for crossing our borders.

We share in the concern that trucks entering the United States from contiguous foreign countries should be fully insured. We also recognize that the enforcement of this requirement could be effectively accomplished at our border ports. An integral part of the customs mission is being a representative for nearly all Federal agencies at U.S. ports of entry and we currently enforce some 400 different laws for over 40 different agencies. The assumption of responsibilities for enforcing the Surface Transportation Act in itself is not an onerous burden.

However, the Customs Service is also very concerned with the facilitaton and expeditious processing of international commerce and travelers arriving in our country. In concert with the administration goal to reduce the size of Government, we must achieve these dual objectives of effective enforcement and increased facilitation with a decreasing number of personnel and resources. We have been able to successfully fulfill the dual customs mission in most of our areas of responsibility, and it is our aim to accomplish this balance with the Surface Transportation Act.

The most serious concern from the customs perspective is that the enforcement of this act, as currently envisioned, will cause unacceptable delays for motor carriers at our ports of entry. The provisions of the act require extensive questioning to determine whether a motor carrier is operating for hire. Once determined, a check must be made of the certificate of financial responsibility and, as we saw today, lastly a review to determine the authenticity of the certificate and if it applies to the vehicles under scrutiny. These steps can become very complex and technical and in many cases are best handled by a qualified official from the Bureau of Motor Carrier safety.

Then we go on and talk about the processing, and potential traffic delays is our big concern. I'll just skip over the rest of it in the sake of time.

Our most important point is that we in customs are willing to contribute our resources and lend our assistance to the development of an effective system that will fulfill the worthy intent of

the Surface Transportation Act without adversely affecting legitimate international commerce.

Thank you.

Mr. SUNIA. Thank you.

Mr. Levine.

Mr. LEVINE. Thank you. I will also summarize my prepared testimony. I think that Chairman Taylor ably summarized many of the developments relating to foreign motor carrier operations in the United States. I would just like to emphasize a few points.

I also have included with my testimony a rather sizable package of background materials which comprise an advanced copy of a status report that Secretary Dole will be sending up within the next week on the subject of Canadian and Mexican motor carrier operations.

Mr. PAUL SCHLESINGER. I believe we got that.

Mr. LEVINE. You got it. All right, very good. Then it is no longer an advanced copy. It is the official copy minus the transmittal letter.

I would like to point out that the imbalance that we find now between the regulatory regimes of the two countries is not new. It has existed for at least 30 years or more, and that it was the regulatory reform of our motor carrier system in 1980 that didn't create that imbalance—it worsened that imbalance, and combined with the economic hard times of 1981 and 1982, it increased the sensitivity of U.S. truckers to the problem, so that it is not a new problems, per se. It is not a new phenomenon, but it is one that has taken on increased importance in light of the regulatory reforms and in light of the generally diminished traffic that U.S. carriers have had to haul.

I would also like to mention that coming out of our July 1982 meeting with the Mexican officials where we thought we had a glimmer of hope with respect to the Cortines decree and increased access for United States trucks to this 20-kilometer border zone, that we—before the close of that meeting, we had some clarification on the part of the Mexican officials which really in my opinion gutted any potential use of the decree as a means to leverage United States trucks into Mexico.

And that was that our complaints had been that local officials were arbitrarily applying a different set of criteria as to who would get in and under what circumstances, and we hoped that a uniform application of the Cortines decree—the Federal decree would solve that.

It was explained to us by the Federal officials that it was the local officials, including local unions who were authorized by the Federal Government who were acting on behalf of the Federal Government and, therefore, had full authority to interpret the Cortines decree at each particular crossing, so that in effect they were telling us that it was a Federal decree but local officials have full authority to interpret it, and they could interpret it just about any way they saw fit, so we found that nobody gets across in Brownsville. You get some people coming across in Nuevo Loredo, and nobody coming across in Nogales, Calexico, and nobody getting across to any degree here in San Diego.

I also want to point out just briefly that a lot of the traffic simply wasn't covered by the moratorium. All of the exempt commodities, commercial-zone carriage, and private carriage are not covered. I don't consider those loopholes, per se, because we knew they wouldn't be covered going in, but we have to recognize that that greatly complicates the ICC's enforcement efforts with respect to the moratorium.

I will just close then with a few comments or observations about the series of checks we made in April with respect to the insurance requirements. There again, a major conclusion is that not all vehicles, indeed, not most of them—most of the vehicles do not have to meet the requirements. Private carriage is not covered by the in-the-cab pool of insurance requirements, and vehicles under 10,000 pounds of gross vehicle weight are not covered.

We found that the Mexican motor carriers were very quick to learn of those two exemptions and employ them within a matter of hours or our setting up inspectors at the border.

Some of our members of our team also speculated that we could inspect to find shipments being broken out into lots that could go into vehicles of less than 10,000 pounds gross vehicle weight if there was a stringent effort to try to enforce the insurance requirements as they apply now.

We just don't think that there are enough enforcement personnel to cover all gates at all times, even during a concentrated enforcement exercise.

DOT and ICC investigators worked only at the commercial gates and only at normal duty hours, and we had probably a half a dozen or more inspectors at each site during that period.

We found, as has been mentioned before, that customs policy is generally to permit empty commercial vehicles to come through the passenger gates 24 hours a day, and they also generally permit perishables to enter through the passenger gates after the commercial gates have been closed in the afternoon, so that the effort to try to cover all the bases would literally require inspectors to be not only at the commercial gates but at the passenger gates literally 24 hours a day if you are going to try to catch all the violators.

The form MCS–90 is the one that the Bureau of Motor Safety requires to be carried in the cab, and we believe that it can be readily acquired or forged, and there again, it could be very easy to detect those under the pressures that the customs inspectors operate during the day to move traffic through as quickly as possible.

Let me stop there, and I'll answer any questions you might have after Ms. Barell. Thank you.

Mr. ANDERSON. Thank you very much for your presentation. Before we call on Ms. Barell, I might say that I was just called to the telephone, and this would be of interest to San Ysidro anyway. Mr. Nelson had just made an announcement asking for a 50-percent increase in border patrol. They just called me and asked me my position, and I told them that I was 100 percent behind it. That's not related to this hearing directly, but it's not unrelated, either.

Ms. Barell, do you have a prepared statement?

Ms. BARELL. I have a number of comments that I could make at this time, and we will submit a statement for the record.

Mr. ANDERSON. With no objection, we will keep the record open.

Ms. BARELL. Thank you.

Mr. Chairman and members of the subcommittee, I am Marian Barell, Director for Latin America in the Office of the U.S. Trade Representative. I thank you for the opportunity to make these comments about our trade relations with Mexico as it relates to trucking.

There is certainly no doubt that this is a difficult issue. I think that the hearing today has made even clearer what some of us knew before. However, the differences in market access between the United States and Mexico stymie us not only in trucking but across nearly the entire range of goods and services traded between our two countries. Differences in levels of economic development coupled with Mexico's recent financial problems present us with major difficulties in attempting to open the Mexican market.

Over the next year or so, I think it is safe to say that if Mexico digs out of its financial problem and tries to pay off its international debt obligation in compliance with the terms of the International Monetary Fund agreement, we fear these problems will continue.

Mr. Chairman, I certainly understand your frustration over the lack of progress in the trucking issue. We feel the same frustration. We have repeatedly attempted to talk seriously with the Mexicans about this issue, to meet with them, and to work out a mutually acceptable solution.

The administration's most recent efforts—my own just 2 weeks ago in Mexico City to sit down with our Mexican counterparts and try to set up an indepth discussion have not yet borne fruit. They say as they usually say, "That's interesting, and we will get back to you."

Nevertheless, we are continuing our efforts.

Mr. Chairman, we also repeatedly made the same points to the Government of Mexico that you made in your own statement at the beginning of this hearing regarding the unfairness of the situation. In July 1983, for example, we had a meeting of the United States-Mexican Joint Commission on Commerce and Trade which is jointly chaired by the Secretary of Commerce and the U.S. Trade Representative, and we met to discuss a number of trade issues prior to the President's trip to LaPaz in August.

At the time, we raised the trucking issue. We made clear our concerns and our objections to the current situation. We also discussed the issue of the Luis Cortines decree of 1955 which has been mentioned extensively today.

Unfortunately, as we mentioned then as has been mentioned today, given the fact that that decree or the Federal decree is administered locally, it is administered without much success, and, therefore, we don't consider it sufficient.

At that time, we did mention that we would like to sit down with the Mexicans. They agreed to consider that.

I do wish to mention though that our trucking problem with Mexico is part of a larger problem that we have in the whole area of services trade given the lack of international rules governing the trade services.

While international trade in goods has an extensive list of rules and disciplines, there is no comparable framework for services. Things like banking, insurance, accounting, and the whole list—and, of course, trucking—all remain outside of the multilateral arena, and for this reason the United States has taken the initiative in the international trade forum to begin to develop some rules.

In November 1982 under the leadership of Ambassador Brock, we did convince our trading partners to undertake a work program to define our problems in services, barriers to services trade, and to attempt to achieve some multilateral solutions.

We have only begun the work, and more importantly, we have only begun to identify what leverage exists in this area in our attempts to open foreign markets to U.S. services such as trucking.

In that regard, I would like to emphasize that the administration's principal objective in services as well as in goods trade is to open markets and not close them, and I would like to take the opportunity to just read a small portion of the statement that Ambassador Brock gave before the Senate Finance Trade Subcommittee in March 1982.

He says:

> In our view, the primary and preferable method for obtaining substantially equivalent market access should always be to seek liberalization of foreign markets rather than to raise equivalently restrictive barriers of our own. Our goal should be to move our trading partners forward through negotiations to a level to market openness more similar to our own. The concept of what we would term "global reciprocity" is the belief that the aggregate benefits derived by each country are substantially equivalent to concessions given by any other party has been the principal underlying system for trading goods since the inception of the general agreement on tariffs and trade in 1948. Though the most-favored-nation system * * *

And here he is referring to the GAP—

> Has fallen short in some ways, the United States and other countries have greatly benefited from this system. Therefore, we intend to adhere to our mutually-accepted obligations under the international trading, and that must discipline our understanding of the reciprocity principle. It is for these reasons that despite our lack of significant success to date with the Mexicans, we have sought and will continue to seek access to the Mexican market on trucking through consultation.

I thank you very much, and we will be happy to answer any questions you have.

Mr. ANDERSON. Thank you very much for your presentation.

I think all of us agree that we would like to have free trade, but it is pretty apparent if what some of you people say is true that we aren't going to get it.

For instance, the Commerce and Trade group of 1982 said that "Mexico has restated its original position that full reciprocity in trucking is not open to discussion."

They make it pretty clear. In another quote here, it says "Mexican officials made it clear they would not lift their ban against United States operating in Mexico even if it results in a prohibition against Mexican truckers operating in the United States."

Then there was the meeting that Mr. La Salle referred to where President Portillo even said that he understood the unfairness, but he wasn't going to do anything from that side of the border. If we wanted to on our side of the border, that was up to us.

Now, aren't they giving us a pretty clear message? It has been a year since we have been working with the Office of the Special Trade Representative and we were told that we were going to get some action. Now you referred to meetings that you have had. I have been told that there haven't been any meetings, so obviously we haven't been aware of all you have been doing, but we want free trade. I mean I want to see free trade—real free trade, but we are pretty well told on the one side that it is going to be closed, and the only free trade is going to be on our side, and I think that obviously we have to make a move.

Now, how long we can wait and wait and wait, I'm not sure.

Congressman Duncan Hunter has a little different idea—which is to eliminate the commercial zone, but there has been some concern expressed here that that might hurt our trade between us and Mexico, and we certainly don't want that. But, there has to be some understanding on their part that we are willing to give some on our side, but we want a little bit of "give" back.

As was pointed out a little while ago, even if we did open our borders, Mexican trucking interests would have the best break because they have lower wages and cheaper fuel prices and other advantages, so they could still undercut our people's prices, but they don't even want to take that.

What do we do? How long do we wait? How long does this thing go on and on before we make some decision?

Ms. BARELL. Hopefully, not much longer than we have already waited.

Well, there are a few things that I would like to say in response. One is that the administration in Mexico has changed since the last president made his comments, and I think it would be misleading for me to say that this particular administration has done anything to contradict those comments.

I don't think the votes are in yet as to whether or not in the end this administration will come down with the same conclusion which is that you might as well go ahead and close your market because we are never going to open ours.

They are not very enthusiastic or inclined to open their market to our trucks.

Mr. ANDERSON. Why should they be? They have 100 percent now.

Ms. BARELL. Sure. They have a terrible unemployment problem. We, obviously, have an unemployment problem as well, but they at this point—I would say that one of their greatest priorities at whatever cost is to provide jobs in Mexico to Mexicans, and I think that the question here is one that I mentioned toward the end of my remarks which is one of finding some leverage. It is not necessarily one of saying, "Well, if you close your market or you keep your market closed, we will close ours as well." I do think that hurts us in many ways more than it helps us. It gets us into a very dangerous system of balancing countries and products and sectors. If you close your market in this product, we will close ours in the same one. Eventually, you have a whole system of barriers being put up because, frankly, there isn't any country that has the same level of openness on a product-by-product basis.

Absent that kind of an approach, you have got to find some other incentive for getting them to open the market, and one of the rea-

sons we would like to meet with them is to determine what is it that they want from us, and then, of course, at that point be able to determine if we are in any position to talk.

We are still even—we are not even at that point yet. I agree with you that it has taken a great deal of time. All of us, I think, would like to get the issue off of our plate in a satisfactory manner.

Mr. ANDERSON. I have more questions. I am going to yield to Duncan at this time.

Mr. HUNTER. Well, thank you, Mr. Chairman.

I will just simply say that I have heard Mr. Brock's statements before, and I have heard him make some very different statements in private when faced with this pragmatic problem that you face in trying to open up markets such as Japan and so forth for a lot of American products, but I think that you have got a gentleman sitting behind you who mentioned that there are other problems in opening up the Mexican market. One of those problems is the type of problem that his trucks encountered when they were operating legally according to Mexican law, and yet they were basically held up for $5,000 to get back into the United States.

Probably I think it has been testified to by our experts that most American truckers are not going to want to penetrate the interior of Mexico because of some real problems that they have down there including personal risks and other things, so I think that the reciprocity or the open highway goal sounds good, but I don't think it is something that is going to come to fruition for our people, and I think that one of our big problems that we are addressing today is not a matter of closing down or changing our laws, it is a matter of enforcing the laws that we have in effect right now. We have no way right now to effectively stop the people who are coming up without ICC operating permits—coming up ostensibly to only deal in the immediate San Diego commercial-zone area, and then head on out for Portland, Oreg. or Chicago, or wherever they want to go, so it's not a matter of slapping the Mexicans with a new law that is harsher or fairer. It is a matter of not being able to enforce laws that we have on our books right now, and it's my understanding that if we could enforce those laws—if we could demand that ICC permit for people who went beyond commercial areas—we would be in much better shape, and we should be able also to enforce our safety restrictions.

We saw trucks at the inspection dock which were unsafe and which had certain aspects about their load or the trucks themselves that could be dangerous to Americans on the highway, and yet we were not prohibiting those trucks from coming in, so we have really two problems here.

One, of course, is the problem of the two-way street. We would like to open up—ideally, we would like to open up the Mexican highways, but that is going to take the solving of a lot of problems beyond mere trade barriers because we are not just shipping lettuce or alfalfa hay into that country. We are shipping people driving trucks, and those people may not be safe driving those highways, but the other problem is simply enforcing our own laws.

I would like to ask you gentlemen if—Mr. Levine and Mr. Baish—if you don't think that we could set up a system. We have the inspection area down here. We just had testimony from our

highway patrolman that we could have people available or we could use that station to inspect for safety, et cetera, and we should be able to have some type of method of ascertaining that those trucks are documented and that they are safe when they come across the border.

I would ask you simply if you don't think that that is within the realm of possibility? If you have any ideas of how we could implement that type of a program, that's what I would like to hear.

Mr. BAISH. Congressman, if I might respond to your question, the area itself seems rather large when you approach it like we did this afternoon, but one of the things that happened to us when we first pulled in was a truck that was blocking our way, and we had to search out and find the driver and get that truck moved just so we could park. I think it is a matter of space. That compound itself is very small.

Ideally, I agree that the very best place is to do it in the compound. The tests were done outside the compound as the trucks were leaving in the April tests, and I think that worked pretty well, but perhaps in the Otay Mesa facility when that opens up—the new border-crossing facility which is down the road a ways—there will be enough space to put in a special enforcement area.

Mr. HUNTER. Well, is every truck inspected to some degree that comes through that compound?

Mr. BAISH. To one degree or another. There are a few trucks that are not inspected.

Mr. HUNTER. Are they inspected at that dock—basically all the way around the dock?

Mr. BAISH. Right.

Mr. HUNTER. While those trucks are parked there, why can't a guy run around that dock if he is with the CHP or whatever, and say, "This guy has got bald tires. This guy is carrying a load of glass that is brimming over. This guy has got no license plate." Why can't you do that? Why is that extremely difficult?

Mr. BAISH. Well, one of the things is that the keys have to be on in order to test the brakes and do all the other tests.

Mr. HUNTER. I understand that.

Mr. BAISH. I think that many trucks running with the volume that is through there, I really don't think——

Mr. HUNTER. I don't think we would order them to have an Indianapolis 500 start where we say, "Gentlemen, start your engines. We are going to test you." Those guys pull in, and at one time they are running. They stop, and that truck has to stay there to be inspected anyway.

Mr. BAISH. Right.

Mr. HUNTER. And at that time you could at least make a rudimentary safety inspection of the vehicle I would think. In other words, if a guy doesn't even use a license plate, you don't have to ask him to turn his engine on and check his brakes. He shouldn't be coming into the country.

Mr. BAISH. Again, I think the best place is outside.

Mr. HUNTER. OK.

Mr. BAISH. There are 300 to 500 trucks coming through there every day, and I just think that the area of the compound itself is too small.

Mr. HUNTER. Do you think that it would be—it is something that is doable, though, to have a full-time inspection station?

Mr. BAISH. I think it is possible. This is with the caveat that the law—especially as regards to the insurance certificate becoming enforceable. It isn't as complicated as we saw today where the man with glass doesn't count. That was a new one for me. I didn't know that one.

Mr. HUNTER. OK. Thank you, Mr. Chairman.

Mr. ANDERSON. I would like to direct a question to you, Ms. Barell.

Would you support barring Mexican carriers from the San Diego commercial zone?

Mr. HUNTER. Right. Without an ICC license. If they didn't have an ICC license.

Ms. BARELL. I think it would depend on the state of the truck—whether or not it—are you saying would I support legislation——

Mr. ANDERSON. Mr. Hunter has a bill, for example, that will close up the zone entirely, which is essentially the same thing.

Mr. HUNTER. Yes. And let's say you have an ICC operating permit meaning that you have got to have that permit whether you want to go to San Diego or Portland.

Ms. BARELL. Well, given the fact that I have not had a chance to review the legislation, I think it would probably be best for me to take a look at it and then get you a more formal comment, and I would be happy to do that.

Mr. ANDERSON. Would you support eliminating the agricultural exemption for Mexican carriers?

Ms. BARELL. I would have to provide you with a response to that later.

Mr. ANDERSON. OK. I have a series of questions that are directed to the Office of the Special Trade Representative, and we will have Ms. Barell answer them for the record.

Ms. BARELL. OK.

Mr. ANDERSON. Also, Ms. Barell, you have stated that you would submit a formal statement for the record. Your responses and formal statement will appear in the record at this point.

[Ms. Barell's statement and responses to questions posed by Mr. Anderson follow:]

OFFICE OF THE U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., December 22, 1983.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Surface Transportation,
Committee on Public Works and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: It was a pleasure to testify before your Subcommittee at the October San Ysidro hearing. The problems our truckers face in attempting to operate in the Mexican market are truly serious, and we are making renewed efforts to find ways of making progress in this area.

Enclosed for inclusion in the record of the hearing are my written testimony and answers to your questions on USTR's views and activities. I apologize for the delay in sending this material to you; unfortunately, I have been out of Washington a great deal this fall.

I thank you again for the invitation to testify. I would be happy to discuss trucking and other matters involving commercial relations with Mexico with your staff and you.

Sincerely,

MARIAN BARELL,
Director for Latin American Affairs.

Enclosures.

STATEMENT OF MARIAN T. BARELL, DIRECTOR FOR LATIN AMERICA, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear here today to discuss trucking relations between the United States and Mexico. This is doubtless a thorny issue and one we would like to resolve in a manner that will be in the best interests of both our countries.

The problems posed by differences in market access stymie us not only in trucking but across nearly the whole range of goods and services traded between our two countries. Disparities in our respective levels of economic development, coupled with Mexico's recent financial difficulties, present us with serious problems in gaining access to the Mexican market. Mexico had traditionally maintained a policy of growth through the substitution of domestic production for imports. In recent years, the government there had begun to liberalize trade, recognizing the inefficiencies that result from protectionism. Unfortunately, last year saw a reversal of that trade-liberalizing trend.

During 1982 and 1983, Mexico has experienced severe economic difficulties, with mounting international debt, rising unemployment and scarce foreign reserves. In response, Mexican officials have turned increasingly inward to restore economic stability and growth. They have focused their attention on curtailing domestic inflation, reducing substantially the federal deficit and earning sufficient export revenues to repay foreign obligations. In accordance with the terms of its commitment to the International Monetary Fund, Mexico has worked to turn its traditional trade deficit with the world into a trade surplus.

The same is true in trade with the United States. Whereas, in 1981, we enjoyed a $4 billion trade surplus with Mexico, by 1982, we saw deficits of nearly that much. Mexico was forced to cut back its shipments from us from approximately $17 billion in 1981 to $11 billion in 1982.

Unfortunately, the effects of the cutbacks have been felt in Mexico and across its northern border. In Mexico, serious production bottlenecks have occurred as traditional imports of inputs were blocked. For the United States, certain U.S. industries, including trucking, have not found the kind of access to the Mexican market which would improve sales and employment opportunities.

We can expect little better in trade expansion terms for 1983. Mexico will simply continue to hold down imports and emphasize exports in order to have the foreign reserves to pay off debt and restore international creditworthiness.

There are signs, however, that the Mexican import situation will begin to improve. Already, that country has begun to ease the entry of products destined for certain production sectors. As the credit problems ease, we are hopeful that Mexico can resume its late 1970's-early 1980's drive toward trade liberalization.

In the meantime, however, we can understand the Subcommittee's frustration over the lack of progress in trucking trade. The Administration feels the same frustration and shares your concern over the absence of a stable market in Mexico for U.S. motor carriers.

We have repeatedly attempted to talk seriously with the Mexicans about this issue, to meet with them and to work out mutually acceptable solutions. Unfortunately, we have been unable to convene a formal meeting with the Mexicans on this issue in more than a year. In July 1982, U.S. and Mexican representatives of the Joint Commission on Commerce and Trade's Transportation Working Group (TWG) met in Mexico City. The purposes or the meeting—chaired on the U.S. side by the U.S. Trade Representative's Office—were to exchange information and to make specific recommendations to the full Commission for improving trucking relations between the two countries.

At the July meeting, participants addressed a wide range of subjects, including Mexico's implementation of its 1982 General Customs Law, Mexico's return of empty U.S. trailers, provision of customs brokerage and freight forwarding services, and truckers' access to border regions. Unfortunately, the July meeting failed to produce significant changes in the treatment accorded U.S. carriers attempting to operate in Mexico.

Although Mexican law—the President Adolfo Ruiz Cortines Decree of October 6, 1955—permits access for U.S. trucks to the urban areas in the border zone, U.S. operations have had difficulty penetrating the market. The decree states that, in accordance with appropriate legal precepts, measures shall be taken to give U.S.-registered for-hire vehicles treatment equal to that granted to Mexican-registered for-hire vehicles operating in the urban areas of the border cities. The decree states, in part:

CONSIDERING

"I. That along the length of the line dividing Mexcio and the United States of America, through those places authorized by both countries for the passage of Persons and Things, it is important and necessary to recognized Movement of Automotive Traffic, whether it crosses from Mexico or from USA, which operate as Public Busses or Cargo carriers in the Urban Areas of the Border Populations of Mexico and USA;

"II. That this movement of Automotive Vehicles resulted in a Mutually Imperative Economic Order (Treaty) for Mexico and USA, which objective is the Promotion and Freeing of International Commerce between both countries.

"III. That this International Commerce has again necessitated the establishment of Traffic Offices that Mexico and USA had established in the Border Cities along the length of the Boundary Lines of both countries, at all times being the clear areas for the distribution of Imported and Exported goods which are registered with two countries and which are transorted by Automotive Transport.

"IV. That loading and unloading service of merchandise Exported or Imported from either Mexico or USA, are phyically impossible to realize unless the Automotive Transports are free to enter, crossing the Border Line, in the Urban Areas of the respective Border Cities;

"V. That in order to implement the Social Disinvolvement and Economic Development of the Country it is Indispensible that International Commerce have the same privilege, that it not be obstructed in any manner."

The decree is administered by local officials, however, and U.S. access can vary from one border crossing to another. As we told our Mexican counterparts at the July TWG meeting, the lack of uniformity in Mexico's treatment of U.S. cross-border carriers creates uncertainties and risks for those carriers and presents an obstacle to improved transport generally. Moreover, we noted, the lack of free access to all trucking services—Mexican and U.S.—could complicate business for in-bond plants operating in the border region. These "maquiladoras" must operate efficiently and smoothly if they are to compete internationally and earn needed export revenues for Mexico.

More recent efforts to liberalize the Mexican market for foreign trucking have not yet borne fruit. Nevertheless, we are continuing our efforts. In a recent trip to Mexico City, I discussed the trucking issue with an official of the Mexican Government. I raised many of the same points that the chairman of this Subcommittee has made regarding the unfairness of the current situation. We are awaiting a response for the Government of Mexico and are hopeful that this response will be more forthcoming than those we have received in the past.

Certainly, as Mexico takes some of its attention away from the more immediately pressing issues created by the international debt situation, we hope resolution of trucking matters will be high on its international agenda.

We are also intent on ensuring that Mexican motor carriers that operate in the United States do so in full compliance with U.S. law. In April, USTR staff joined officials from the Department of Transportation, the Interstate Commerce Commission and the U.S. Customs Service in their inspection of Mexican-owned vehicles at key border crossing points. From a trade policy perspective, we aim to maintain an open market to Mexican products but only to those that enter under proper authority.

I wish to mention, however, that the trucking issue with Mexico is just part of a larger dilemma we face due to the lack of international rules governing all services industries.

While our international trading system governs the movement of goods, there is no comparable discipline for services. Successive rounds of negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) have reduced tariff barriers to importing and led to the development of multilaterally-agreed discipline in the use of non-tariff barriers for goods. Many countries have accepted rules governing Federal entity purchasing practices, the use of subsidies, and methods of val-

uing imports for tariff assessment purposes. Services, however, remain, for the most part, unaffected by these rules.

International operations in banking, insurance, accounting, construction, transportation, and a host of other services remain outside of multilateral guidelines. Yet, trade in these so-called "intangibles" represents billions of dollars to the U.S. economy and has earned us surpluses in our current account when goods trade has fallen short.

Since services account for an increasingly important part of the world's trade, the United States has taken the initiative in the GATT to begin to develop rules in those sectors. We agreed with our trading partners at the November 1982 Ministerial-level meeting of the GATT to undertake a work program to define our problems and barriers in services trade and to develop multilateral solutions. Over the past year, work has been progressing, but we have only begun to identify our priorities. We have only begun to determine what leverage exists to open foreign markets to U.S. services, such as trucking and other forms of transportation.

I wish to emphasize in this regard that the Administration's principal objective in services, as well as in goods, trade is to open markets, not to close them. We believe the greatest benefit, in terms of prices and choice for consumers, employment opportunities for workers and sales possibilities for our industries, arise from freer international trade. And, the primary and preferable method for obtaining substantially equivalent market access should always be to seek liberalization of foreign markets rather than to raise equivalently restrictive barriers of our own. Our goal has been—and should continue to be—to move our trading partners forward through negotiations to a level of market openness more similar to our own.

What we term "global reciprocity"—that is, the belief that the aggregate benefits derived by each country are substantially equivalent to concessions given by any other party—has been the principle underlying our world system for trade in goods since the inception of the GATT in 1948. Though the most-favored-nation (MFN) system has fallen short in some ways, we believe that, on balance, the United States and other countries have greatly benefited from this system. Therefore, we intend to adhere to our obligations under the international trading system. Those obligations and the objective of opening foreign markets must discipline our understanding of a reciprocity principle not only as it applies to goods but as it applies to services as well.

It is for these reasons that, despite our lack of significant success to date, we have sought—and will continue to seek—access to the Mexican market through consultation, rather than through retaliatory market restriction.

I hope that we will see an improvement in the trucking situation, in the near future. Both our economies would benefit greatly from such an improvement.

Thank you.

QUESTIONS FOR THE RECORD, OCTOBER 7, 1983, HEARING BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Question 1. Why have there been no negotiations involving the U.S.-Mexico Joint Commission on Commerce and Trade on this issue in the past year?

Answer. Despite attempts by the United States, we have been unable to schedule a meeting with the Mexicans on this issue. Mexico's 1982 financial difficulties forced that country to delay action on a number of important international issues and, indeed, to reverse a recent trend toward liberalization of international trade. As Mexico has worked to comply with its commitments to the International Monetary Fund and to repay its foreign debt, officials there have made little progress in addressing trade issues of great concern to the United States. Trucking and U.S. truckers' access to the Mexican market are issues that have, unfortunately, been "put on hold" during this period.

Question 2. Does the Office of the United States Trade Representative still hold out serious hope for the success of such negotiations? If yes, when might these take place? Why is Mexico now willing to negotiate on this issue?

Answer. Yes, we are still cautiously optimistic that we can find a solution to our trucking problem. We are hopeful that discussions with the Mexicans will take place shortly, particularly as Mexico increasingly turns its attention to bilateral trade matters. Mexican officials have placed a high priority on the development of all regions of the country, including the border area. Expansion and efficient operation of the in-bond plants or "maquiladoras", could be facilitated by free access to all sources of trucking. We are hopeful that Mexican officials will consider it to be in their country's best interests to allow a free flow of trucking traffic.

Question 3. Would USTR support the revocation of existing operating authority in the hands of Mexican carriers?

Answer. We would prefer that trade between the United States and Mexico remain as free as possible and that we achieve access to the Mexican market through negotiation, rather than retaliation. Therefore, were the revocation of licenses undertaken for retaliatory reasons, we would have to oppose the action.

Question 4. Would you, at this time, support an extension of the two-year moratorium? At what point might you reach a determination on this? By imposing the moratorium now, might we not coaxe the Mexicans to the bargaining table, since the President would then have the authority to lift the moratorium as he did with Canada?

Answer. The moratorium on ICC grants of operating authority to Mexican motor carriers will expire next year, and we therefore believe it is too early to comment on an extension. Once we have had an opportunity to discuss this situation with the Mexicans and to raise the point that further inaction on their part could result in a further extension, we will be able to comment further. I do not believe a further extension at this time would improve the opportunity for constructive dialogue with the Mexicans. In addition, as a matter of policy, USTR continues to oppose the enactment of laws which will require bilateral, sectoral, or product-by-product reciprocity.

Question 5. Do you think it beneficial to the government and the economy of Mexico for U.S. companies, with plants in the United States, to establish satellite facilities in Mexico, employing Mexicans? If yes, is this something you might want to encourage? If yes, do you think this is being encouraged when the company, in shipping materials from one plant to the other, finds it has to pay more by interlining at the border, or else hire only a Mexican carrier?

Answer. Particularly in the current capital-scarce environment, I believe it would indeed be beneficial to Mexico to encourage foreign direct investment. At present, only four percent of the investment in Mexico comes from external sources. Foreign equity participation, along with increased export revenues, could be used to ease financial constraints in Mexico and increase employment opportunities on both sides of the border. This Administration is supportive of increased U.S. investment overseas since it encourages trade, employment and economic growth at home. However, we believe current restrictive Mexican investment laws, although adminsitered flexibly, serve as a disincentive to greater foreign equity participation. Therefore, for Mexico to attract—and for the United States to encourage—long-term, productive investment by U.S. firms in Mexico, we believe Mexico will have to create an environment more conducive to such stable investment.

As a related point, we believe that Mexico's restrictions on the operation of U.S. motor carriers could reduce the possibilities for expansion of in-bond plant operations on the Mexican side of the border. Should a U.S. investor seek to use U.S. operators and find he cannot do so, he may be reluctant to operate in the Mexican border zone. Should he be required to switch drivers and carriers at the border, this could create inefficiencies, increase his cost of doing business and hence reduce his competitiveness. All such results would discourage increased investment.

Question 6. Would you support barring Mexican carriers from the San Diego commercial zone?

Answer. From a trade policy perspective, USTR would have to oppose restrictions or bans on Mexican carriers legally providing a service to the San Diego commercial zone. Our objective is to achieve a bilateral settlement through mutual liberalization, rather than restriction.

Question 7. Would you support eliminating the agricultural exemption for Mexican carriers?

Answer. As above, we would have to oppose new restrictions imposed for trade retaliatory purposes.

Question 8. Would you support removing the exemptions for private carriage and trucks over 10,000 pounds from our insurance provisions?

Answer. USTR would have to oppose increased restrictions on Mexican motor carriers, including those removing the private carriage and below-minimum gross vehicle weight exemptions, were these restrictions imposed for retaliatory purposes. Imposing sector-by-sector, product-to-product or country-by-country reciprocity would set an independent standard for unilateral action. Under this scenario, instead of judging the fairness of foreign market access according to internationally agreed standards, we would be required to judge it by the access accorded to foreigners in the U.S. markets. Other countries would soon follow suit, with serious negative repercussions for the entire international trading system.

Question 9. What ideas do you have for solving this problem, since the Mexican Government seems to be sufficiently satisfied with the *status quo* that they choose not to negotiate a settlement?

Answer. Now that the new Administration is settled there, I believe Mexico will be in a better position over the next year to work on trade liberalization requests of the United States. Through improved cooperation and an enhanced dialogue between the two countries, we should be able to achieve a mutually acceptable solution. Moreover, should Mexico come to understand that free movement of trucks would be in its own economic interests, we should see some positive movement on this issue.

Mr. Sunia.

Mr. SUNIA. No, sir.

Mr. ANDERSON. Is it possible, and do you have the resources required to allow you to screen out or help screen out those Mexican trucks which attempt to enter the country by way of the commercial zone or under the agricultural exemption, and then abuse those exemptions by hiring themselves out illegally? We are told this happens—I was told just an hour ago by a witness who said that even the agricultural trucks cross over and unload their goods wherever they take them in the marketplace, and then they stay in this country and keep operating.

My question is, do you have the resources required to allow you to screen out those trucks which enter the country by way of the commercial zone or under the agricultural exemption and then abuse those exemptions by hiring themselves out illegally?

Mr. BAISH. I would like to be responsive to your question. You know, our jurisdiction is right at the border as far as U.S. Customs goes when the truck is entering, and that's where our determination has to be made, and then we agreed that is probably the best place. We do have the resources to staff that compound and to assist the other agencies.

Mr. ANDERSON. Strictly Customs' work basically because this is pretty close.

Mr. BAISH. Yes. There are Department of Agriculture inspectors available also.

Mr. ANDERSON. Yes, but all they do is inspect the produce to see if the Mexican trucker is violating their laws, and then they let him go. They don't know whether they unload it and keep working or whether they come back. There is no followup at all.

If either of these exemptions were eliminated, would that make your job easier?

Mr. BAISH. I would say that certainly our job would be made easier if we had an easy enforceable law that didn't have so many points and counterpoints and things that make it much more difficult for the inspectors to be able to determine what is the status of that truck—that particular truck at that time.

Mr. ANDERSON. Would it facilitate matters for Customs if all foreign carriers operating in the United States had to display stickers indicating compliance to the U.S. inspection and insurance laws, that absent that identification, trucks would be denied entrance?

Mr. BAISH. Absolutely. When Congressman Hunter brought that up this morning during our testimony, that, of course, is the easiest way to do it. If somebody could prominently come across—if we could have a prominently displayed sticker with yes, no, yes, no, that would certainly make our job a lot easier.

Mr. ANDERSON. I have other questions that I am going to submit to you for response for the record.

Mr. BAISH. OK.

Mr. ANDERSON. We also have additional questions for Mr. Levine to respond to for the record.

Is there anything further for him?

Mr. HUNTER. No.

Mr. ANDERSON. Fofo.

Mr. SUNIA. No, sir.

Mr. ANDERSON. If there aren't any further questions other than the ones that I have, and I am going to have those answered for the record, I want to thank you for your presentation. We do appreciate it.

Mr. BAISH. Thank you.

[The questions submitted by Representative Anderson and responses received from Mr. Levine follow:]

QUESTIONS POSED BY REPRESENTATIVE ANDERSON TO MR. LEVINE, CHIEF, INTERNATIONAL TRADE DIVISION, U.S. DEPARTMENT OF TRANSPORTATION

UNITED STATES/MEXICO TRUCKING: QUESTIONS FOR THE RECORD

Question 1. The penalty for operating on a U.S. highway without the required insurance document is $10,000 per occurrence. Do you know the total value of the fines collected since the enactment of the bill?

Response. The penalty for operating on a U.S. highway without the required insurance document is no more than $10,000 for each violation. In determining the amount of any penalty for such a violation, the Director of the Bureau of Motor Carrier Safety must "take into account the nature, circumstances, extent, the gravity of the violation committed, and with respect to the person found to have committed such violation, the degree of culpability, and history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require." At this time no fines have been assessed against a motor carrier found to be in violation of the financial responsibility provisions of 49 CFR 387. During the calendar year 1982 there were 2,406 motor carriers audited by the FHWA's motor carrier field staff. Of these 2,406 carriers, 1,099 were found to be in violation of 49 CFR 387. Most of the violations were corrected immediately. There were no violations found that warranted prosecution.

Question 1a. Do these fines accrue to the U.S. Treasury?

Response. Any fines collected will accrue to the U.S. Treasury.

Question 1b. (If yes * * *) Once past the California border, it is primarily up to the California Highway Patrol to enforce this provision, is it not?

Response. Yes. There will be times when BMCS field staff personnel will conduct roadside inspections in conjunction with the California Highway Patrol. At these times all foreign owned motor vehicles will be inspected to ascertain compliance with the provisions of 49 CFR 387.

Question 1c. (If yes * * *) And yet, if fines accrue to the U.S. Treasury, is there sufficient State incentive to enforce the law?

Response. Yes. The State of California has financial responsibility requirements of its own. Any fines assessed for violation of these rules would accrue to the State. Further, California has demonstrated a keen interest in having safe vehicles operated on its highways. BMCS records indicate that Mexican owned/domiciled vehicles are much more likely to have "out of service" defects than U.S. owned/based vehicles. Fines for those type violations would also accrue to the State.

Question 2. What would you recommend we do to strengthen the insurance provision?

Response. The financial responsibility provisions of 49 CFR 387 do not need strengthening.

Question 3. The Surface Transportation Assistance Act of 1982 provided for a grant program to assist the states in enforcing safety laws. When implemented, this program will help the states and the Federal Government to enforce safety. It should also be a tool helping the states with their safety enforcement program with respect to foreign carriers. What is the status of this program?

Response. The interim final rule was published in the *Federal Register*, on Wednesday, August 31, 1983 (45 FR 39455). Applications from the various States are now being accepted. It is expected that the first grants will be made during January 1984.

Mr. ANDERSON. Our last panel is Jack Green, vice president, Board of Directors of the Highway Carriers Association; and Mr. Bob Alexander, southern representative, Highway Carriers Association.

Your prepared statement will be made a matter of the record.

I am going to have to leave a little after you have started, and Mr. Sunia will take the chair and will complete the hearing.

[Joint statement of Jack Green and Bob Alexander follows:]

TAX LOSSES FROM UNREGULATED MEXICAN CARRIERS

By Highway Carriers Association, June 1982

PART 1 - THE PROBLEM

Unrestricted operation of Mexican highway carriers on California highway causes a significant loss of tax revenue to the State. They transport freight millions of miles on California highways to and from the Border. They have been seen as far north as the State of Washington. Such transportation is permitted by government without payment of fuel taxes, weight fees, registration fees, use taxes, or American insurance to protect California motorist.

Hundreds of California's regulated highway common carriers are suffering serious revenue losses, including the loss of State and city taxes generated by California carriers' revenues. Mexican truck drivers deprive American drivers of jobs and the State and Federal Government of millions of dollars in income, social security, compensation and employment taxes assessed on employee earnings.

The prevailing "open door" policy for Mexican highway carriers will surely intensify the problem in the future. In fact, industry observers have noted instances of Mexican trucking companies transporting property within the State, and this activity can be expected to grow.

There is no similarity in transportation to Mexican farm laborers who fill jobs refused by our people. There are hundreds of California truck drivers looking for work; and many trucking companies eager to provide transportation to and from the border.

There is a geographical difference here that may not prevail elsewhere. California and Baja California Norte constitute a single commercial and industrial complex politically divided (see map Appendix A). Nonetheless, the difference in legal philosophy must be recognized by each Country enforcing its laws for the benefit of its citizens. There is no doubt that Mexico understands the issue and the unregulated opportunity to expand its trucking industry at our expense. Its Constitution contains a proviso (Article 131) directing the Minister of Transportation "to prohibit the transit of articles, products and goods by foreign (U.S.) carriers". Mexico enforces this

mandate for its citizens. California should equally enforce its laws for the protection of its citizens.

Unfortunately, The State Department has intervened. A State Department official stated "its too early to say what the specific problems and solutions are."; and another "the trucking industry's assertions about the problem aren't being accepted"; and goes on "the agencies involved want to be careful not to try to correct a problem that might not exist.". The State Department is not an expert in transportation; its bureacratic disparagement of the trucker's integrity is intolerable.

The ICC allows, notwithstanding State's rights, Mexican truckers to cross the border unchecked. It says they may do so in a range of 15 miles although without concern that such truckers drive thousands of miles after crossing into California without paying state taxes. Its tolerance is inconsistent with the policy provisions of the Interstate Commerce Act; and in conflict with President Reagan's policy (Washington Report, 5-4-82) "The Federal Government will only do those things permitted in the Constitution and all others remain with the States. Too much authority is taken from the States."

Reciprocity is not an answer. If anything it would exacerbate California's revenue and labor problems by creating the illusion that Mexican carriers have acquired tax free legal status. Interstate reciprocity works because of our common background and similarity of laws. No such commonality exists with a foreign government. It is frivalous to assume that Mexican administrators will de facto repeal their Constitution; and most unreasonable to expect that they will collect or share their use and revenue taxes with California.

Looking to Congress or the State Department to resolve California's tax and regulatory problems can create a major issue over state rights vs. Federal jurisdiction under the United States Constitution.

In summation, the problem exists as facts and testimony demonstrate. It will continue to exist, and become more serious, until government faces its obligation to provide for the economic welfare of our people; and leave foreign governments to look after their welfare.

PART 2 - FACTS

As previously stated Baja California Norte is strongly interwoven into the State of California's industry; without it Baja would be little more than a tourist attraction. Traffic flow on Baja highways is relatively a small fraction of the total mileage operated in through service (map Appendix A).

The Los Angeles Times (San Diego Edition, 4-3-82,) established about 1250 trips per day for Mexican trucks last year. The California Highway Patrol reported 149,751 border crossings (File #601.8385.A5687). These figures were registered at San Ysidro and San Onofre only. The CHP has no facilities at Calexico or Potrero, and its operations at San Ysidro and San Onofre are not "around the clock"; consequently their report must be regarded as very conservative.

The 1250 trips constitute 300,000 crossings per year (240 work days). They result in over 100 million miles of travel on California highways with a fuel tax loss exceeding 3½ Million Dollars Annually (Tables 1 thru 3, Appendix A).

The Teamster's union representative in San Diego pointed out that as many as 350 American truck drivers are out of work because of Mexican drivers working in California. At $13.00 per hour, average truck driver wages in California, the payroll loss to the economy reaches some $27,378,000 a year with a consequent income tax loss of millions of dollars. These figures are set out in Tables 4 and 5 (Appendix A). The ICC Act says that when more than 50% of payroll is earned in a State that State can extract withholding taxes from an employer in another State. Yet it is apparent that Mexican domiciled transportation employers are exempt from this liability.

The tax losses shown in Appendix A are not all inclusive. There are others not computed such as (1) Federal Use Tax (IRS Publication 349), (2) PUC and City gross revenue taxes pursuant to Chapters 3 and 6 (Division 2) of the Public Utilities Code.

Arizona charges interstate carriers taxes or trip fees for passing through or in and out of their State; apparently without fear of Constitutional or ICC Act violation (see Arizona's 1982 highway tax law,

APPENDIX A

Maps and Cost Tables

APPENDIX A

By applying the California general intrastate commercial traffic [illegible] to Mexican operating mileage and hours in California can be determined.

Table 1

Distribution of Trips

Traffic Flow (To and From General Area)	Percent of Trips	Number of Trips
In Border Counties	2%	6,000
The [illegible] To and From Los Angeles Basin	83%	249,000
Long Haul: To and From Northern California	15%	45,000
	100%	300,000

Table 2

Mileage Projection

(Using basing points from the PUC Mileage Guide)

Number of Trips	Base pt. Rd. trip mileage	Total Miles
6,000	38 (Calexico to Imperial)	228,000
249,000	298 (San Ysidro to Santa Monica)	73,302,000
45,000	1070 (San Ysidro to Sacramento)	48,150,000
300,000		121,680,000

Mexican commercial vehicles are, as are California commercial vehicles generally trucks, with or without trailers, or tractor trailer combinations. Some are gasoline powered but most are diesel, and usually equipped with 200 gallon fuel tanks. Some Mexican combinations have been observed with 100 or more gallon supplemental fuel tanks.

Go West magazine reported (April 1982) that diesel fuel consumption in 2 pertinent test cases varied from 5.23 to 4.58 miles per gallon, averaging 4.88.

The figures from Table 2 gives a projection at Table 3, of tax for diesel used on California highways and the loss in fuel tax revenue, both State and Federal.

Table 3

Fuel Tax Loss

Miles (table2)	Fuel used at 4.88 MPG	California Fuel tax at 9¢ (1983)	Federal Fuel tax at 4¢
228,000	46,721	$4,204	$1,868
73,206,000	15,001,295	$1,350,116	$600,051
48,150,000	9,866,803	$888,012	$394,672
101,584,000	24,914,819	$2,242,332	$996,591
	6% State Sales tax	$134,539	-0-
	Total	$2,376,871	$996,591

Mexican truckers enjoy a side-line source of revenue by dumping fuel, tax free, before returning to Mexico. For example, on the short line run (table 2) they will only consume about 75 gallons, leaving 125 gallons or more to sell. Since Mexican diesel prices are about 23¢ per gallon dumping can be a very lucrative venture, and there is no way to police it except by collecting the tax at the border, or transfer shipments to California carriers who can only buy in California. Transfer of shipments will at least help resolve Mexico's alleged fuel black market. (see page 11).

APPENDIX A

From the per trip tables we can project withholding and payroll which would be paid if all property was interchanged at the border, i.e. Mexican drivers transport on their roads subject to their laws, and California drivers transport on our roads subject to our laws. Table 4 and 5 provide the data.

Table 4

Hours of Operation in California

Number of Trips	Estimated hours per Trip	Total Hours
6,000	Urban: 2 Rd. trips @ 2 hrs. = 4	24,000
249,000	Short Line: 8 hours Rd. trip= 8	1,992,000
45,000	Long Line: 2 days @ 10 hrs. = 20	90,000
300,000		2,106,000

At 40 hours per week, Number of weekly pay checks 52,650

Table 4 reduces total hours to 52,600 annual weekly pay checks. It is probable that some 200 California carriers are directly concerned at this time so it averages 263 driver's compensation checks annually for 240 working days. Therefore, to extropolate a potential payroll tax loss it is assumed each weekly compensation check, whether payroll or division of transportation revenue, results in a tax loss as shown in table 5.

Table 5

Income Tax Loss Projection
(Driver Plus 3 Dependents)

Weekly pay $520.00 (40 hours @ $13.00)	Federal W/H	State W/H
Income Tax (1982)	$85.40	$13.30
Fita (13.4%)	$69.68	-0-
Total	$155.08	$13.30
Annual Loss ($155.08 & $13.30 x 52,650)	$8,164,962	$700,245

It is interesting to observe that the ICC Act Section 11504(b)(2), subjects interstate companies to payment of state income taxes in those states where an employee works for 50% or more of his time or miles. The Mexican trucker can be occupied in California for more than 50% free of such tax liability.

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ARIZONA DEPARTMENT OF TRANSPORTATION

MOTOR VEHICLE DIVISION

1801 West Jefferson Street, Phoenix, Arizona
Mailing Address: P.O. Box 2100, Phoenix, Arizona 85001

BRUCE BABBITT
Governor

WILLIAM A. ORDWAY
Director

JUAN MARTIN JR.
Assistant Director

September 10, 1982

Helen J. Dalby
Highway Carriers Association
918 J Street, Room 102
Sacramento, CA 95814

Dear Ms. Dalby:

This is in response to your recent letter to Mr. Ordway regarding California's problems with carriers based in Mexico. The specific problem was that California does not receive any fees and/or taxes from these carriers. We have avoided this problem in Arizona through legislation.

The major Mexico based carriers who traverse Arizona have tax accounts with us and their vehicles are registered here. Those without tax accounts and registration must purchase permits. These permits are for a Single Trip with a life of 96 hours. When the permits are purchased, use fuel and motor carrier taxes are included. I am enclosing copies of the Arizona Statutues that give us this authority.

If you need further information and/or assistance, it would be more expeditious to contact the Motor Vehicle Division, TAxpayer Assistance area responsible for ensuring compliance with tax registration and tax laws. They can be reached at P. O. Box 2100, Phoenix, AZ 85001.

Sincerely,

Juan Martin, Jr.

Juan Martin, Jr.
Assistant Director

JM:wr
Attachments

cc: W. A. Ordway

ARIZONA DEPARTMENT OF TRANSPORTATION

MOTOR VEHICLE DIVISION

1801 West Jefferson Street, Phoenix, Arizona
Mailing Address: P.O. Box 2100, Phoenix, Arizona 85001

BRUCE BABBITT
Governor

WILLIAM A. ORDWAY
Director

JUAN MARTIN JR.
Assistant Director

October 5, 1982

Don B. Shields
Highway Carriers Association
8696 South Atlantic Avenue
South Gate, California 90280

Dear Mr. Shields,

Douglas, Nogales and San Luis are all ports of entry that have been established for a considerable length of time. All of these border stations were built before the cost of building became so great. We will answer your questions based on current information.

1. Depending on location, size and the type of facility, the cost would be from $250,000 to $3,000,000.
2. The border stations are open during the same hours as the border itself is open.
3. The three border ports do not have facilities for carriers to interchange trailers, containers or freight.
4. The stations are operated by the Motor Vehicle Division of the Department of Transportation.
5. All three of these stations are financially affective. Douglas serves not only Mexico but those entering from New Mexico on U.S. 80.
6. The collection of transportation tax has not proven to be a burden on foreign trade. We have no connection with U.S. Immigration Services or U.S. Customs.
7. The funds for installing the facilities was provided by the states general fund.

We are glad to provide information whenever possible. If you require additional assistance please contact a taxpayer assistant at (602) 261-7451 or direct correspondence to the Arizona Department of Transportation, P.O. Box 2100, Room 234M, Phoenix, Arizona 85001.

Sincerely,

Virginia Woodward, Manager
Taxpayer Assistance Unit
Tax Revenue Section

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(If you have any comments about Mr. Bergman's article, send them to the
editor, SFC306. Please include your name or initials in case your letter
is used in Forum Feedback.)

SAN DIEGO (UPI) - Officials in Mexico are worried about a continuing river of government-subsidized diesel fuel that is being
smuggled north to California.

Trucking industry officials estimated 180,000 gallons are smuggled
across the border each day.

The subsidy allows truck drivers to buy the fuel in Mexico for only
20 cents per gallon. In San Diego, the price averages $1.20 per gallon.

"The price difference is enormous," said Raul Pastor Ramos,
President of the Baja California committee of federal freight
transporters. "They're buying the fuel in Mexico at 19 cents a gallon
and selling it in San Diego for 90 cents a gallon.

"A driver can make $1,000 every eight hours a day," said Ramos.

[illegible]

III. PROFILE OF THE CITY OF MEXICALI *

A. Overview

The City of Mexicali is located in the northeastern section of Baja California (Mexico), directly across the border from Calexico, which is located in the California Imperial Valley agricultural area. Mexicali, with an estimated population of 650,000, is the state capital and second largest city in Baja California. Unlike most Mexican border cities, Mexicali is not a tourist attraction nor does it have a large U.S. city directly across the border. This latter characteristic makes it less favorable as a gateway entry for migrating to the U.S., and consequently the population appears more stable and less transient than in other Mexican border cities. This quality has been supported through interviews with plant managers and officials in Mexicali who report that employee turnover is often less than 1%.

B. Market Position

Mexicali is relatively close to several cities in both California and Arizona; examples include:

- California
  - San Diego 120 miles
  - Los Angeles 200 miles
  - San Francisco 600 miles
- Arizona
  - Yuma 60 miles
  - Phoenix 250 miles
  - Tucson 320 miles

Mexicali's proximity to the California market is significant because:

- California is one of the largest manufacturing and industrial centers of the U.S., with approximately 13% of U.S. manufacturing plants, and accounts for almost 10% of the value added by manufacturing in the U.S.
- The Los Angeles-Long Beach area represents 3.6% of U.S. retail sales, the largest single area in the U.S. In addition, the Anaheim-Santa Ana area is ranked fifteenth in retail sales, and San Francisco-Oakland sixth.
- The California economy is relatively healthy with sales of the top 500 companies in California growing by over 22% in 1981.

* Pages 12, 13 and 14 are from a report by Touche Ross & Co., 3700 Wilshire Boulevard, Los Angeles, California 90010 entitled "In-Bond Industry in Mexicali".

C. Supporting Infrastructure

In general, Mexicali's infrastructure can support not only its current industry base but also can accommodate considerable growth. Additions to its current supply of electricity as well as modifications to the available telecommunications systems should enhance its position significantly. Specific aspects of its infrastructure are summarized below:

- Electricity - Mexicali's electrical system is linked to that of the U.S. and complies with standards imposed by one of its largest customers, the San Diego Gas and Electric Co. Characteristics of the system include:
  - At present, peak demand is approximately 23% below generating capacity. However, a new geothermal plant, which is scheduled for completion in summer of 1982, will increase the margin between current peak demand and capacity to over 40%.
  - Operating statistics would appear to indicate that power outages are infrequent and the lowest in Baja California. Additionally, since its system is connected to the U.S., Mexicali has the ability to purchase power in case of major failure.
  - Rates vary according to the type and amount of power utilized and have increased 1.5% each month since July 1978. Monthly increases are, however, scheduled to terminate in July 1982. Companies are assessed an initial charge for any additional equipment required to service a plant, such as transformers.
- Water - This is supplied by the Public Service Commission, and although generally capacity is sufficient, several plants do use internal reservoirs to ensure a constant availability and stable pressure. Minimal deposits are required for meters and mains; and the usage fee, which is on a sliding scale, increases with consumption.
- Gas - Natural gas is not available by pipeline, but truck delivery of propane is available.
- Telecommunications - The city is devoting significant effort and resources to generally upgrading and preparing its telecommunications systems to accommodate growth and to ensuring adequate capacity to meet future demands.
  - Telephone service has in the past experienced several difficulties; however, a new system, which is currently 75% installed, has alleviated most of the problems. This new system will offer push-button and digital service using a new exchange and the number of lines available will increase from 15,000 to 27,000. Direct lines are available to the U.S. and direct dial service is in place to all points of the U.S.
  - Telex service is also available.

BREAKDOWN OF MEXICAN IN-BOND PLANTS
BY LOCATION AND TYPE OF EMPLOYMENT

Location	Plant Distribution		Employee Categories			Total Employed
	Number of Plants	Percent of Total	Nonskilled Workers	Technicians	Administrative	
BAJA CALIFORNIA						
Tijuana	125	20.6	12,010	1,327	761	14,098
Mexicali	63	10.4	6,526	813	339	7,678
Tecate	20	3.3	706	51	43	800
Ensenada	4	0.7	244	13	15	272
COAHUILA						
Cd. Acuna	15	2.5	2,900	245	127	3,272
Piedrad Negras	15	2.5	2,193	241	82	2,516
Others	5	0.8	1,086	181	66	1,333
CHIHUAHUA						
Cd. Juarez	127	20.8	37,643	3,791	2,659	44,093
Chihuahua	24	4.0	4,405	353	286	5,044
JALISCO						
Guadalajara	13	2.1	3,117	603	564	4,284
SONORA						
Agua Prieta	22	3.6	3,489	606	156	4,251
Nogales	62	10.2	10,623	1,392	771	12,786
Others	9	1.5	599	83	75	757
TAMAULIPAS						
Matamoros	46	7.6	13,294	1,489	784	15,567
Nuevo Laredo	12	2.0	2,247	199	61	2,507
Reynosa/Rio Bravo	16	2.6	6,126	577	592	7,295
OTHER STATES*	29	4.8	3,017	348	254	3,619
Total	607	100.0	110,225	12,312	7,635	130,172

Source: SEPAFIN In-Bond Report, September 1981.

Notes: *Includes Baja California Sur, State of Mexico and the Federal District

Mr. Anderson.

TESTIMONY OF JACK GREEN, VICE PRESIDENT, BOARD OF DIRECTORS, HIGHWAY CARRIERS ASSOCIATION, ACCOMPANIED BY BOB ALEXANDER, SOUTHERN REPRESENTATIVE, HIGHWAY CARRIERS ASSOCIATION

Mr. ALEXANDER. Since the meeting here in February 1981, Highway Carriers has undertaken the task to present what the tax losses are in lost revenues which is figured on basically the figures of southern California and somewhat through the Federal Government.

One of the things that we would like to point out is that the Constitution—I am talking about the Mexican Constitution at this particular time—has a proviso, article 131, directing the minister of transportation to prohibit the transit of articles, products, and goods by foreign carriers [United States].

Mexico enforces their law. The United States does not, at the present time with the free zone being only on this side of the border and not to the south in Mexico.

Notwithstanding the States rights of the California truckers, we are losing lots of revenue in this area. There are 1,250 trips a day of Mexican trucks, and this is based on the 1982 edition of the Los Angeles Times and was confirmed from the Highway Patrol facilities at San Ysidro as well as San Onofre. They have no facilities on Interstate 15 or at Tecate or Mexicale.

We took these 1,250 crossings a day, computed this into a percentage of trips that they are traveling in the United States or California after they cross in. We figured the number of trips a year was 300,000 trips. We figured approximately 101,584,000 miles traveled illegally in the State of California and in the United States, but primarily in the State of California for lost revenue.

In projecting this out, it would show the number of gallons of fuel used. We have 4.8 miles per gallon. In using a State revenue—and this is based upon 1982–83 figures, the fuel used at 24,914,819 gallons shows a loss to the State of California of fuel tax when figured at 9 cents a gallon of $2,376,000.

This money could be used to help maintain a border check point. The loss in revenue of Federal fuel tax alone was $1 million in round figures. This is based upon California entry.

Mexican trucks enjoy a sideline source of revenue by bringing fuel into California and dumping it and returning to Mexico. They have brought into California 125 gallons or more at a time, dropped it here in San Ysidro, Chula Vista, and the national city areas, and they make 23 cents a gallon and put it in their pocket. It costs 25 cents down there. They pick up an extra 23 cents a gallon here, and it is a tradeoff situation. This was confirmed through the UPI wire service.

One of the things that we would like to get to that is this same loss of income and projection and what have you, and what is recommended by Highway Carriers to offset this is the fact of a 24-hour inspection station to collect all fees that are due at the border point of entry.

Just as a point of interest, in using 300,000 trips a year and tabulating these out, we are looking at a 40-hour work week, and the number of weekly pay checks of 52,650 pay checks. That represents 52,650 jobs, 52,650 registered voters I hope. The table reduces this further down and shows just what the lost revenue comes to.

In Federal withholding tax, we are looking at an annual loss of $8,164,962. The State withholding tax lost to the State of California is $700,000. This is money that could go to keep personnel on at the border. It could be self-supporting. It could have an 24-hour or an 8-hour critical items inspection station. All fees for fuel—the fuel taxes would be collected, the verification of insurance, make sure that they are qualified. Everything can be handled under one office at the border, or they are turned around and sent back.

We have heard today basically about closing the border. We know that possibly the border is not going to be closed. If we can't close the border, then I ask that we take and collect the moneys that are already due to the taxpayers of the United States and California. They should be collected and paid on and worked on a trip basis and pay as you go right at the border the same as our sister State, Arizona, does today.

At this particular time, I would yield. If there are any questions, I will be more than glad to answer them. I feel that the report that we have submitted is self-explanatory for the record and I will be more than glad to answer any questions.

Mr. SUNIA. Mr. Green.

Mr. GREEN. Yes, sir.

Mr. SUNIA. Would you care to comment?

Mr. GREEN. Bob pretty well covered everything that we had. My personal feeling is that we need to stop the Mexican truckers from coming in or collect the taxes from them. That's my own personal feeling.

Mr. SUNIA. I have a question here that you have already answered. Your statement here says that carriers domiciled in Mexico escape payment of Federal and State taxes.

Mr. ALEXANDER. Yes, sir.

Mr. SUNIA. You support a user tax of some sort for foreign carriers?

Mr. ALEXANDER. Yes, sir.

Mr. SUNIA. That's pretty straightforward.

Mr. ALEXANDER. That's the only way to do it. The ICC law follows that says that anything over 50 percent of the income derived in a foreign country or foreign state that the money is to be withheld, and we can't do it with Mexico, so you are going to have to collect it at the border when they come in. That's the only way we can do it.

Mr. SUNIA. You also refer to an article—a statute. You have attached to your testimony a copy of a letter from Juan Martin which explains the meaning of the application of that statute.

Does California have a similar law, or have there been attempts to enact such a law? Would you support enactment of such legislation at the State level?

Mr. ALEXANDER. There has been an attempt to introduce a bill to do this in the State of California. The first attempt was assembly bill 3345 that was submitted by Assemblyman Chuck Ray 2 years

ago. Consequently, it got delayed through—we won't go through that, but anyhow there were a few behind-closed-doors sessions. The legal counsel did not get the opinion back in time for it to go forward. We have since contacted and we are working right with Senator Jim Ellis's office and Assemblyman Steve Feese's office in order to go forward with the revenue taxation under our old assembly bill 3345, and we hope that we can get something enacted along this line which will collect the fees, and if it does, this will support—self-support and be self-supporting as testimony presented here today—licenses alone collected right here at the border would show that they can pay, and the border should be closed. All commercial vehicles should come through one gate and one gate only. If they don't qualify, they just unhook and go back to Mexico, and the American truckers take it from there on.

Mr. SUNIA. Duncan.

Mr. HUNTER. Thank you, Mr. Chairman.

Gentlemen, I would be interested if you could tell me how the Arizona system works. Let's say that a trucker drives up to the border in Arizona, what do they charge them, and how do they go about determining what they should pay?

Mr. ALEXANDER. In Arizona, you pay by the mile. It costs you $98 one way across Arizona, and it doesn't make any difference whether you are from Mexico or from California. They collect right there on the spot.

Mr. HUNTER. OK. So at their international border, the Mexican trucker drives up. He has to pay how much then?

Mr. ALEXANDER. I don't have the dollars-and-cents figures, but what they—let me quote out of here just a half a second:

> The Mexican-based carriers who traverse Arizona have tax accounts with us, and their vehicles are registered here. Those without tax accounts and registration must purchase permits. These permits are for a single trip and with the life of 96 hours.

That's it.

One thing I might add is if they are caught after that thing expires, that truck is red tagged on the spot, and they don't move. That truck can be impounded.

Mr. HUNTER. They are given a permit. What form is the permit?

Mr. ALEXANDER. They have to pay a license fee, a registration fee, and then you have to carry it in the cab with the truck.

Mr. HUNTER. By the trip.

Mr. ALEXANDER. By the trip.

Mr. HUNTER. And you don't know how much it is exactly?

Mr. ALEXANDER. Yes. It is the same price which I would have to pay from Yuma, Ariz., to Phoenix which is 300—well, 315 miles to San Diego, but it's probably about 140 miles into Arizona. It costs me $94.

Mr. HUNTER. OK.

Mr. ALEXANDER. And the Mexican truck has to pay the same.

Mr. HUNTER. So a Mexican trucker coming into Arizona has to pay that much.

Mr. ALEXANDER. Yes.

Mr. HUNTER. And you say that basically anyone coming into Arizona to use their highways——

Mr. ALEXANDER. That's right. Any surrounding State, any interstate carrier unless they are prorated with Arizona.

Mr. GREEN. We used to run a pickup truck. Eight miles east of Yuma to Winter Haven is $15.

Mr. HUNTER. Well, would you support that being applied to other States though?

Mr. ALEXANDER. Well, you better believe it.

Mr. HUNTER. You are not just talking about Mexico.

Mr. ALEXANDER. No, sir.

Mr. HUNTER. You are talking about having a California——

Mr. ALEXANDER. Port of entry.

Mr. HUNTER [continuing]. Port of entry. OK.

Very interesting. Well, gentlemen, I'm very impressed with your testimony, and I can say that I am glad that our State representatives who are working on legislation are going to try to solve this problem.

I would like to ask you do you feel—what is your feeling about establishing or taking away the commercial zone that presently exists that allows people to come in without ICC permits?

Mr. ALEXANDER. I don't want to sound like a smart person at this particular point, but I'm going to have to say this: What free zone?

Mr. HUNTER. Yes. Well, what it is——

Mr. ALEXANDER. No, the reason I'm saying this is for border treaty, there is no free zone, because the Mexicans do not honor to the 15 kilometers, so therefore, the treaty should be null and void.

Mr. HUNTER. I see.

Mr. ALEXANDER. It is very simple and straight forward.

Mr. HUNTER. Your response is that you don't like it.

Mr. ALEXANDER. No, sir.

Mr. HUNTER. Excellent.

Mr. ALEXANDER. It should come out. There should be no free zone.

Mr. HUNTER. OK.

Mr. ALEXANDER. We can't run there. They can't run here. It's very simple.

Mr. HUNTER. I appreciate your testimony, Mr. Alexander and Mr. Green. Thank you.

Mr. Chairman, that's all I have.

Mr. SUNIA. Thank you very much.

I believe you can appreciate the fact that nothing is simple when it comes to legislation. Something that we think can be very simple and very straight forward has a lot of other involvements as well.

I am sure I speak on behalf of the chairman and the members of this committee when I say how much we appreciate hearing from you all today.

That concludes this subcommittee hearing, and we are now adjourned.

[Whereupon, the hearing of the subcommittee was adjourned at 5:10 p.m., as described above.]

ADDITION TO THE RECORD

U.S. TRADE REPRESENTATIVE,
Washington, D.C., August 16, 1982.

Hon. GLENN M. ANDERSON,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ANDERSON: The U.S. Motor Carrier Act of 1980, Public Law 96-296, greatly eased U.S. market entry requirements for Mexican for-hire motor carriers. However, there has not been a corresponding easing of market entry in Mexico for U.S. motor carriers. Under Mexico's constitution restrictive measures virtually prohibit any foreign motor carrier operations within Mexico. In response to this situation, I have determined to intensify our efforts to negotiate a solution to the problem. Our objective is to achieve fair and equitable competitive opportunities in the Mexican market. To date progress in achieving this objective has not been significant.

In September, 1981 the U.S.-Mexico Joint Commission on Commerce and Trade established a Transportation Working Group. The members of the U.S. Delegation, led by the Office of the United States Trade Representative, have been negotiating with their Mexican counterparts to achieve fair opportunities for U.S. truckers in the Mexican market. Our negotiators made it clear to Mexico that only by making concessions can it avoid the possible action to restrict access to the U.S. trucking market. We are considering options for future action that will enhance our ability to succeed in opening the Mexican market. In addition to the two-year moratorium on the granting of new ICC operating authority as provided in pending legislation, a broad range of possible actions to improve our prospects of establishing fair competition with Mexico is under review.

I share Secretary Lewis' views on this matter and concur that a period of consultations with Congress of 60 days is appropriate prior to any future action to modify the moratorium.

I would be pleased to provide any further information should you so desire.

Very truly yours,

WILLIAM E. BROCK.

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